

EXHIBIT G

Page 386

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3

4 In re:)
5 SECURITIES INVESTOR)
6 PROTECTION CORPORATION,)
7 Plaintiff-Applicant,)
8 vs.) 08-01789 (SMB)
9 BERNARD L. MADOFF)
10 INVESTMENT SECURITIES, LLC,)
11 Defendant.)
12 In re:)
13 BERNARD L. MADOFF,)
14 Debtor.)
15

16 CONFIDENTIAL

17 Videotaped Deposition of BERNARD L.
18 MADOFF, VOLUME III, taken on behalf of the
19 Customers, before K. Denise Neal, Registered
20 Professional Reporter and Notary Public, at the
21 Federal Correctional Institution, 3000 Old Highway
22 75, Butner, North Carolina, on the 8th day of
23 November, 2017, commencing at 9:00 a.m.

24 * * * * *

CONFIDENTIAL

Page 387		Page 389
1 APPEARANCES OF COUNSEL:		
2		
3 On Behalf of the Customers:		
4 HELEN DAVIS CHAITMAN, Esq.		
5 Chaitman, LLP		
6 465 Park Avenue		
7 New York, New York 10022		
8 (908) 303-4568		
9 hchaitman@chaitmanllp.com		
10		
11 On Behalf of Sage Associates, Sage Realty,		
12 Malcolm Sage, Martin Sage and Ann Passer Sage		
13 ANDREW B. KRATENSTEIN, Esq.		
14 McDermott Will & Emery, LLP		
15 340 Madison Avenue		
16 New York, New York 10173-1922		
17 (212) 547-5695		
18 akratenstein@mwe.com		
19		
20		
21		
22		
23		
24		
25		
	Page 388	Page 390
1 APPEARANCES OF COUNSEL:		
2		
3 On Behalf of the Trustee:		
4 AMANDA E. FEIN, Esq.		
5 STACY DASARO, Esq.		
6 Baker Hostetler		
7 45 Rockefeller Plaza		
8 New York, New York 10111-0100		
9 (212) 589-4621		
10 afein@bakerlaw.com		
11		
12 On Behalf of the Deponent:		
13 PETER A. GOLDMAN, Esq.		
14 12 Fairlawn Parkway		
15 Rye Brook, New York 10573		
16 (914) 935-6857		
17 pagoldman@gmail.com		
18		
19 Videographer:		
20 Bob Collier, CLVS		
21		
22 * * * * *		
23		
24		
25		

2 (Pages 387 - 390)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

Page 391		Page 393	
1	INDEX OF EXHIBITS (Continued)	1	INDEX OF EXHIBITS (Continued)
2	FOR THE CUSTOMERS:	PAGE	2 FOR THE CUSTOMERS:
3	Exhibit Number 52, Confirmation of	442	3 Exhibit Number 75, Sage Associates
4	transaction		4 statement - 12-31-03
5	Exhibit Number 53, Memorandum of	442	5 Exhibit Number 76, Confirmations
6	transaction and confirmation		6 Exhibit Number 77, Confirmations
7	Exhibit Number 53A, Credit memorandum	487	7 Exhibit Number 78, Confirmations
8	Exhibit Number 54, Memorandum of	444	8 Exhibit Number 79, Confirmations
9	transaction and confirmation		9 Exhibit Number 80, Sage Associates II
10	Exhibit Number 55, Memorandum of	447	10 Statement - 12-31-03
11	transaction and confirmation		11 Exhibit Number 81, Sage Associates II
12	Exhibit Number 56, Memorandum of	448	12 Statement - 12-31-03
13	transaction and confirmation		13 Exhibit Number 82, Confirmation
14	Exhibit Number 57, Sage Associates II	449	14 Exhibit Number 83, Memorandum of check
15	statement		15 Exhibit Number 84, Handwritten note
16	Exhibit Number 58, Sage Associates II	450	16 Exhibit Number 85, Letter from Malcolm
17	statement		17 Sage
18	Exhibit Number 59, Sage Associates II	451	18 Exhibit Number 86, Sage Associates
19	memorandum of transaction and confirms		19 Statement - 4-30-06
20	Exhibit Number 60, Sage Associates II	451	20 Exhibit Number 87, Confirmations
21	memorandum of transaction and confirms		21 Exhibit Number 88, Letter from Malcolm
22	Exhibit Number 61, Letter	452	22 Sage
23	Exhibit Number 62, Sage Associates	456	23
24	statement		24
25			25
Page 392		Page 394	
1	INDEX OF EXHIBITS (Continued)	1	THE VIDEOGRAPHER: We are now on the
2	FOR THE CUSTOMERS:	PAGE	2 record. Please note that the microphones are
3	Exhibit Number 63, Sage Associates	458	3 sensitive and may pick up whispering and private
4	statement		4 conversations. Please turn off all cell phones or
5	Exhibit Number 64, Exhibit inadvertently	---	5 place them away from the microphones as they can
6	skipped		6 interfere with the deposition audio. Recording will
7	Exhibit Number 65, Maurice S. Sage	458	7 continue until all parties agree to go off the
8	Foundation statement		8 record. My name is Bob Collier representing
9	Exhibit Number 66, Memorandum of	459	9 Veritext Legal Solutions.
10	transaction and confirmation		10 Today's date is November 8th, 2017 and the
11	Exhibit Number 67, Memorandum of	459	11 time is approximately 9:00 a.m. This video
12	transaction and confirmation		12 deposition is being held at Butner Federal
13	Exhibit Number 68, Memorandum of	459	13 Correction Facility located at 3000 Old 75 Highway,
14	transaction and confirmation		14 Butner, North Carolina and is being taken by counsel
15	Exhibit Number 69, Letter from Malcolm	459	15 for the Plaintiff-Applicant. The caption of this
16	Sage		16 case is Securities Investor Protection Corporation,
17	Exhibit Number 70, Sage Associates	462	17 Plaintiff-Applicant v. Bernard L. Madoff Investment
18	statement - 1-31-03		18 Securities, LLC, Defendant.
19	Exhibit Number 71, Confirmations	463	19 This case is being held in the United
20	Exhibit Number 72, Confirmations	463	20 States Bankruptcy Court, Southern District of New
21	Exhibit Number 73, Letter from Malcolm	464	21 York, Case Number 08-01789 (SMB). The name of the
22	Sage		22 witness is Bernard L. Madoff. At this time the
23	Exhibit Number 74, Sage Associates	467	23 attorneys present in the room and everyone attending
24	statement - 12-31-03		24 remotely will identify themselves and the parties
25			25 they represent. Our court reporter is Denise Neal

3 (Pages 391 - 394)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

Page 395	Page 397
1 representing Veritext Legal Solutions.	1 A. Right.
2 MR. KRATENSTEIN: Good morning. Andrew	2 Q. And was Mr. Maurice Sage a customer of
3 Kratenstein from McDermott Will & Emery, LLP	3 yours?
4 representing Malcolm Sage individually as well as	4 A. Yes.
5 the representative of his mother Lillian's estate,	5 Q. How did he come to be your customer?
6 Martin Sage, Ann Passer Sage, Sage Associates and	6 A. The same way, through my father-in-law.
7 Sage Realty.	7 Q. Could you describe how that happened?
8 MS. CHAITMAN: Helen Davis Chaitman on	8 A. I had a lot of my father-in-law's clients.
9 behalf of a number of different Defendants.	9 He was their accountant.
10 MR. GOLDMAN: Peter Goldman on behalf of	10 Q. And just for the record, your
11 Bernard L. Madoff.	11 father-in-law's name was?
12 MS. DASARO: Stacy Dasaro on behalf of the	12 A. Paul Alpern.
13 Trustee.	13 Q. When did as best you can recall Maurice
14 MS. FEIN: Amanda Fein, Baker Hostetler,	14 Sage become a customer of yours?
15 on behalf of the Trustee.	15 A. Probably in the '60s.
16 THE VIDEOGRAPHER: Will the court	16 Q. And do you recall Maurice Sage passing
17 reporter, Denise Neal, please swear in the witness	17 away?
18 and we can proceed.	18 A. Yes.
19 BERNARD L. MADOFF,	19 Q. What do you recall of that?
20 having been first duly sworn, was examined and	20 A. I think he had a heart attack while giving
21 testified as follows:	21 a speech at a charitable dinner.
22 EXAMINATION	22 Q. Do you recall when that was approximately?
23 BY MR. KRATENSTEIN:	23 A. No.
24 Q. Good morning, Mr. Madoff.	24 Q. And would 1976 sound about right?
25 A. Morning.	25 A. Yes.
Page 396	Page 398
1 Q. Are you on any medication or is there any	1 Q. And is it correct that after he died his
2 other reason that you cannot give truthful testimony	2 wife, Lillian, and his children, Malcolm, Martin and
3 today?	3 Ann, were customers of yours through various
4 A. I'm on medication, but it won't interfere	4 accounts that they held with your firm?
5 with my testimony.	5 A. Yes.
6 Q. You believe you can give full and complete	6 Q. Do you recall that one of those accounts
7 truthful testimony?	7 was called Sage Associates?
8 A. I do.	8 A. Correct.
9 Q. Thank you. As I mentioned at the outset, I	9 Q. Another account was called Sage Realty?
10 represent the Sages, Martin Sage, Malcolm Sage, Ann	10 A. Correct.
11 Passer Sage, as well as two entities with which	11 Q. Do you recall that they had various other
12 they're affiliated, Sage Associates and Sage Realty.	12 accounts such as Maurice Sage Trust, Sage Associates
13 Do you recall the Sage family?	13 II, MMRN and the Maurice Sage Foundation?
14 A. Yes.	14 A. Yes.
15 Q. The Sage family were customers of yours?	15 Q. You've previously testified that your fraud
16 A. Yes.	16 started in 1992; correct?
17 Q. How did they come to be your customers?	17 A. Correct.
18 A. You know, through my father-in-law.	18 Q. The Sages became your customers well before
19 Q. Do you recall somebody named Maurice Sage?	19 your fraud started; correct?
20 A. Excuse me?	20 A. Correct.
21 Q. Maurice Sage, do you remember him?	21 Q. Any trading you would have done in their
22 A. Yes, uh-huh.	22 accounts before at least 1992 would have been real
23 Q. Who was he?	23 trades that were actually executed?
24 A. He was the father of the three children.	24 A. Correct.
25 Q. Martin, Malcolm and Ann?	25 MS. FEIN: Objection to form.

4 (Pages 395 - 398)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

<p style="text-align: right;">Page 399</p> <p>1 Q. (By Mr. Kratenstein) You've also testified 2 previously that all of your convertible bond 3 arbitrage trading was real; is that correct? 4 A. Correct. 5 Q. So any convertible bond arbitrage trading 6 you did in any of the Sages' accounts at any time 7 including the Sage Realty account would have been 8 real trades that were actually executed by your 9 firm? 10 A. Correct. 11 MS. FEIN: Objection to form. 12 Q. (By Mr. Kratenstein) Is it correct that 13 your fraud was limited to what is known as the split 14 strike trading? 15 A. Correct. 16 Q. Do you recall having meetings with the 17 Sages at your offices? 18 A. Yes. 19 Q. What do you recall of your meetings with 20 the Sages? 21 A. I don't recall the dates, but it was in the 22 latter years, probably in 2000, something like that. 23 Q. Was this when you were in the Lipstick 24 Building? 25 A. Yes.</p>	<p style="text-align: right;">Page 401</p> <p>1 explain how the Sages were different than your 2 discretionary customers? 3 A. Well, they basically didn't have a 4 particular strategy that was one of our specialties, 5 which would have been convertible securities trading 6 or split strike conversion, which happened in the 7 later years. 8 Q. And so they directed you on to whether to 9 buy or sell specific securities? 10 A. Yes. 11 Q. That was unusual? 12 A. Yes. 13 Q. Most of your customers were by that time in 14 split strike? 15 A. Yes. 16 Q. Did the -- do you recall anything else of 17 your meetings with them? 18 A. What was the question? 19 Q. Do you recall anything else of your 20 meetings with the Sages? 21 A. Not particularly, no. 22 Q. Would you meet with all three Sages, in 23 other words, Malcolm, Martin and Ann? 24 A. Yes. 25 Q. And would one of them do talking more than</p>
<p style="text-align: right;">Page 400</p> <p>1 Q. Do you recall any of the substance of those 2 meetings? 3 A. They wanted to change their style of 4 trading where they were going to direct the trades. 5 Q. What do you mean by direct the trades? 6 A. In other words, they would give 7 instructions to me what they wanted to buy and what 8 they wanted -- and when they wanted to sell it and 9 so on. 10 Q. Was that atypical? 11 A. Yes. 12 Q. How so? 13 A. That was the general rule was we handled 14 all of the decision making for the clients, limited, 15 limited decision making. Basically, there's a 16 definition of discretionary accounts in the 17 securities industry where discretion is limited -- 18 discretion is limited to time and price of a 19 security. 20 That's not considered discretion. It's 21 only when you give them -- when you make the 22 decision to what security to buy and sell that it 23 becomes a full discretionary account. That's an SEC 24 regulation. 25 Q. And so could you just expand on that and</p>	<p style="text-align: right;">Page 402</p> <p>1 the other two? 2 A. Basically, Malcolm Sage. 3 Q. Okay. Did the Sages deal with anybody else 4 at your firm such as Annette Bongiorno? 5 A. Probably, yes. 6 Q. Why do you say probably yes? 7 A. Because she was on a different floor, so 8 I'm not aware of when the conversation took place; 9 but she was the head bookkeeper, so normally she 10 would follow the instructions of what the client 11 gave her on certain -- in certain instances. 12 Q. Would you recognize Ms. Bongiorno's 13 handwriting? 14 A. Not really. 15 Q. Well, we may see it later and we'll see if 16 you can recognize her handwriting. I take it you'd 17 have occasion to see her handwriting at work 18 sometimes; is that correct? 19 A. Yes. 20 Q. What was Ms. Bongiorno's exact role with 21 respect to the Sage accounts? 22 A. She primarily handled all of the retail 23 clients' accounts. 24 Q. And that would include the Sages? 25 A. Yes.</p>

5 (Pages 399 - 402)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

Page 403	Page 405
1 Q. And how do you define the retail clients?	1 A. Uh-huh.
2 A. Not an institution.	2 Q. So when it says RECD, what does that mean?
3 Q. Not an institution?	3 A. Means the security was received into the
4 A. Right.	4 account.
5 Q. Okay. To your knowledge did she maintain a	5 Q. Does that mean that the client would have
6 file for each customer's account?	6 physically delivered a security to you?
7 A. Yes.	7 A. Usually, unless it was received from a bank
8 Q. To your knowledge would she maintain client	8 or another brokerage firm.
9 correspondence in those files?	9 Q. And then do you see above those entries
10 A. Yes.	10 there are various credits also for those various
11 (Exhibit Number 32 was marked for	11 securities?
12 identification.)	12 A. Those are sales transactions.
13 Q. (By Mr. Kratenstein) We talked about one	13 Q. And then the proceeds of the sales are
14 of the accounts earlier, one that's called the	14 shown on the account?
15 Maurice Sage Trust. I'm going to show you a	15 A. Correct.
16 document that we've marked as Exhibit 32. Put that	16 Q. Would these have been real receipts of the
17 in front of you. Mr. Madoff, do you recognize this	17 securities, receipts of real securities?
18 document?	18 A. Yes.
19 A. Yes.	19 Q. Would the sales have been real sales of
20 Q. What is it?	20 those securities?
21 A. It's clients account document listing the	21 A. Yes.
22 activity in the account.	22 MS. FEIN: Objection.
23 Q. Do you see at the top it's dated	23 (Exhibit Number 33 was marked for
24 December 31, 1979?	24 identification.)
25 A. Uh-huh, yes.	25 Q. (By Mr. Kratenstein) Let's go to -- you
Page 404	
1 Q. You see it's for the Maurice Sage Trust	1 can put that document aside. I'm going to show you
2 account?	2 another document which we've marked as Exhibit
3 A. Yes.	3 Number 33.
4 Q. Were documents like these be generated on	4 MS. FEIN: Thanks. We can take just one.
5 or around the date indicated in the top left corner?	5 Q. (By Mr. Kratenstein) Okay. Mr. Madoff, do
6 A. Yes.	6 you recognize what we've marked as Exhibit 33?
7 Q. And was it ordinary practice of your	7 A. Yes.
8 business to generate accounts like -- I'm sorry --	8 Q. What is it?
9 statements like this?	9 A. It shows movement of monies into an
10 A. Correct.	10 account.
11 Q. Do you know where statements like this	11 Q. You see on the top it's called house number
12 would be stored after they were generated?	12 17 cash and securities for settlement?
13 A. Usually, you know, in the bookkeeping	13 A. Uh-huh.
14 department.	14 Q. Dated December 13th, 1979?
15 Q. And so documents of this type would be	15 A. Yes.
16 maintained under your firm's custody and control?	16 Q. Do you see that?
17 A. Yes.	17 A. Uh-huh.
18 Q. Looking now at the specific activity in the	18 Q. What is a cash and securities for
19 account, do you see in the middle of the page that	19 settlement statement?
20 there are several securities that are marked as	20 A. It just shows the movement of securities.
21 having been received, Dr. Pepper, Asarco, Alcan,	21 Q. From where to where?
22 American Telephone & Telegraph, Skyline, Kaiser?	22 A. From other brokerage firms, from the client
23 A. Yes.	23 themselves, come from a number of sources.
24 Q. RCA, Central Penn, Reynolds and more	24 Q. And would reports like this have been
25 Skyline? Do you see that?	25 generated in the ordinary course of your firm's

6 (Pages 403 - 406)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

<p style="text-align: right;">Page 407</p> <p>1 business?</p> <p>2 A. Correct.</p> <p>3 Q. And would a report like this have been 4 printed out on or around the date indicated at the 5 top, in this case, December 13th, 1979?</p> <p>6 A. Correct.</p> <p>7 Q. And was it a regular part of your firm's 8 business to keep and maintain records of this type?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know where records like this would 11 have been maintained?</p> <p>12 A. Where they would have been?</p> <p>13 Q. Yeah, yes.</p> <p>14 A. The same place. They were on the firm's 15 premises.</p> <p>16 Q. Thank you. Do you know how often reports 17 such as this, these cash and securities for 18 settlement reports, would be run by your firm?</p> <p>19 A. Probably either the end of the week, the 20 end of the month or end of the quarter. I'm not 21 sure.</p> <p>22 Q. Okay. This one is a house 17 cash and 23 securities for settlement report. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Were similar reports run for house five, in</p>	<p style="text-align: right;">Page 409</p> <p>1 Q. And so is this the equivalent, I appreciate 2 it's for a different date, but it's the equivalent 3 of the type of report we see in Exhibit 33 for house 4 17, cash and securities for settlement?</p> <p>5 A. I'm assuming so.</p> <p>6 Q. Okay. And do you know how often these 7 house five cash and securities for settlement 8 statements would be run?</p> <p>9 A. No. I'm not.</p> <p>10 Q. They would be run periodically, though?</p> <p>11 A. Yes.</p> <p>12 Q. This is a house five statement. So would 13 the transactions on the house five statement be real 14 transactions?</p> <p>15 A. Yes.</p> <p>16 Q. And for house 17 at a time like Exhibit 33, 17 which is December 13th, 1979, would those all be 18 real transactions?</p> <p>19 MS. FEIN: Objection to form.</p> <p>20 THE WITNESS: Yes.</p> <p>21 Q. (By Mr. Kratenstein) Sorry. Your answer 22 was?</p> <p>23 A. Yes.</p> <p>24 Q. Thank you. To your knowledge did your firm 25 ever stop running cash and securities for settlement</p>
<p style="text-align: right;">Page 408</p> <p>1 other words, are there house five cash and 2 securities for settlement reports?</p> <p>3 A. That would represent typically market 4 making or proprietary trading, not for clients, 5 which are the firm's principal account.</p> <p>6 Q. So is the answer to my question yes, that 7 there would be cash and securities for settlement 8 statements for house five?</p> <p>9 A. Yes.</p> <p>10 Q. I'm going to mark --</p> <p>11 A. I'm assuming.</p> <p>12 Q. Well, I'll show you one. Here's Exhibit -- 13 that's 33. Wait a minute. 34. You know what? 14 This will be 35. I'm going to come back to 34.</p> <p>15 MS. FEIN: Okay.</p> <p>16 MR. KRATENSTEIN: Sorry.</p> <p>17 (Exhibit Number 35 was marked for 18 identification.)</p> <p>19 MS. FEIN: Thank you.</p> <p>20 MS. CHAITMAN: Thank you.</p> <p>21 Q. (By Mr. Kratenstein) Do you see that what 22 we've marked as Exhibit 35 is a house five cash and 23 securities for settlement statement dated in this 24 case May 16th, 1996? Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 410</p> <p>1 reports for either house 5 or house 17 during the 2 course of your business?</p> <p>3 A. I assume not.</p> <p>4 Q. Turning back to Exhibit Number 33, if you 5 turn -- there are Bates numbers in that corner. If 6 you turn to the one that ends in 9381, look at that 7 corner. Would you like me to do it for you? Here, 8 turn it for you.</p> <p>9 MS. CHAITMAN: What page was that?</p> <p>10 MR. KRATENSTEIN: 9381.</p> <p>11 MS. CHAITMAN: Okay.</p> <p>12 Q. (By Mr. Kratenstein) If you look at the 13 bottom of page 9381, do you see the transactions 14 that we saw in Exhibit Number -- in the prior 15 exhibit, Exhibit Number 32 and 33, which were the 16 delivery of the various securities into the Maurice 17 Sage Trust account and then the sales of those 18 securities?</p> <p>19 A. Yes.</p> <p>20 Q. And those were at the bottom of the page 21 there?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Sorry. That's a yes?</p> <p>24 A. Yes.</p> <p>25 Q. And they show up on the cash and securities</p>

7 (Pages 407 - 410)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

Page 411	Page 413
1 for settlement statements dated December 13th, 1979, 2 correct? 3 A. Yes. 4 Q. And these are all real positions? 5 A. Yes. 6 Q. And the sales were real? 7 A. Yes. 8 Q. If you turn in a few more pages and I'll 9 just take it and turn to the page, to page 00709388, 10 looking at that page, Mr. Madoff, do you see there's 11 an entry there for National Bank of America, 160 12 Broadway at the bottom of the page? 13 MS. FEIN: Objection to form. 14 Q. (By Mr. Kratenstein) Under National Bank 15 of America? 16 A. Yes. 17 Q. And do you see under National Bank of 18 America it indicates sales of the securities we were 19 just talking about starting with Asarco? Do you see 20 that? 21 A. Yes. 22 MS. FEIN: Objection to form. 23 Q. (By Mr. Kratenstein) Do you understand 24 what these entries mean? 25 A. It means these are just sale transactions.	1 Q. (By Mr. Kratenstein) Mr. Madoff, do you 2 recognize this document? 3 A. Yes. 4 Q. What is it? 5 A. It's the Maurice Sage Trust account. 6 Q. And this is dated March 31, 1980; correct? 7 A. Uh-huh. 8 Q. Sorry. That's a yes? 9 A. Yes. 10 Q. And, again, like the other Maurice Sage 11 Trust document that we saw, account document, this 12 would have been generated in the ordinary course of 13 your firm's business? 14 A. Correct. 15 Q. And do you see that it shows in the middle 16 of the page the receipt of an RCA Corp convertible 17 bond and then two American Telephone & Telegraph? 18 A. Right. 19 Q. Two American Telephone & Telegraph 20 securities? 21 A. Correct. 22 Q. And would those have been receipts -- is 23 that what received means, received the securities? 24 A. Right, yes. 25 Q. Would these have been real transactions?
Page 412	Page 414
1 Whose account is this for? Oh, this is a cash to 2 securities account. It would be transactions that 3 were made through National Bank of North America. 4 Q. Does that mean that these securities were 5 sold to National Bank of North America? 6 A. Probably correct, either sold through them 7 as an agent for other brokerage. I'm not sure. 8 Q. Okay. Would these have been real sales? 9 A. Yes. 10 MS. FEIN: Objection to form. 11 MR. KRATENSTEIN: I'm going to take these 12 documents and put them aside. 13 MS. FEIN: Andrew, just the name here, I 14 think you were using National Bank of America. 15 THE WITNESS: It's National Bank of North 16 America. 17 MR. KRATENSTEIN: I thought I said 18 National Bank of North America, but if I didn't, I 19 stand corrected. Thank you. 20 (Exhibit Number 34 was marked for 21 identification.) 22 MS. CHAITMAN: Is this 34? 23 MR. KRATENSTEIN: Yeah. This is 34. I 24 apologize. We're going out of order. This is 25 Exhibit Number 34.	1 A. Yes. 2 MR. KRATENSTEIN: You can put that 3 document aside. 4 (Exhibit Number 36 was marked for 5 identification.) 6 Q. (By Mr. Kratenstein) I'm showing you 7 what's been marked as Exhibit Number 36. Let me see 8 this for a second. That's the first page. Just a 9 second. Do you have two pages? 10 MS. FEIN: We have one. 11 MR. KRATENSTEIN: There's the next one. 12 MS. FEIN: Thank you. 13 Q. (By Mr. Kratenstein) I'm showing you 14 what's been marked as Exhibit Number 36. 15 MS. CHAITMAN: Thank you. 16 Q. (By Mr. Kratenstein) And do you see that, 17 Mr. Madoff, this is another Maurice Sage Trust 18 statement, this one from June 30th, 1981? 19 A. Correct. 20 Q. And like the other Maurice Sage Trust 21 account documents, this would have been generated in 22 the ordinary course of your firm's business? 23 A. Yes. 24 Q. You see it shows the sale of in the middle 25 of the page American Telephone & Telegraph?

8 (Pages 411 - 414)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

Page 415	Page 417
1 A. Yes.	1 Q. And this would have been generated in the
2 Q. Would that have been a real transaction?	2 ordinary course of your firm's business?
3 A. Yes.	3 A. Yes.
4 MS. FEIN: Objection to form.	4 Q. And do you see that in the middle of the
5 Q. (By Mr. Kratenstein) Sorry. I'll ask it	5 page there's another sale of an American Telephone &
6 again. Would that have been a real transaction?	6 Telegraph security?
7 MS. FEIN: Objection to form.	7 A. Yes.
8 THE WITNESS: Yes.	8 Q. And that would have been a real transaction
9 MS. FEIN: I'm just objecting to your use	9 that actually occurred?
10 of the term real.	10 A. Yes.
11 MR. KRATENSTEIN: Real.	11 (Exhibit Number 38 was marked for
12 MS. FEIN: We didn't define real, but	12 identification.)
13 you've been using it frequently.	13 MR. KRATENSTEIN: Thank you. You can put
14 Q. (By Mr. Kratenstein) When I say -- when I	14 that document aside. There's Exhibit 38.
15 say a real transaction, what do you understand me to	
16 be meaning?	15 MS. FEIN: Thanks.
17 A. Let's assume a legitimate transaction where	16 Q. (By Mr. Kratenstein) Mr. Madoff, this
18 we actually buy or sell the securities.	17 document is a little bit different than the ones I
19 MR. GOLDMAN: That actually took place?	18 was just showing you. Do you see at the top it's
20 THE WITNESS: Hmm?	19 dated January 31, 1983, National Bank of North
21 MR. GOLDMAN: That actually took place?	20 America?
22 THE WITNESS: Yes.	21 A. Correct.
23 Q. (By Mr. Kratenstein) So when we say real,	22 Q. What is this document, if you know?
24 and you understand for all the prior questions I	23 A. It's a month-end statement for activity
25 asked you about real transactions --	24 that happened during the month and at the end of the
	25 month shows what the account was, long or short.
Page 416	Page 418
1 A. Correct.	1 Q. Would these -- it says at the top National
2 Q. -- we were talking about an actual purchase	2 Bank of North America. Does that mean that these
3 or sale of a security or delivery of a security that	3 were securities held at the National Bank of North
4 actually took place?	4 America by your firm?
5 A. Can't you just make the assumption if I	5 A. Probably, yes. Could have been held in a
6 state that all the transactions prior to 1992 were	6 depository.
7 real transactions or are we going to go through this	7 Q. Why does it say National Bank of North
8 whole charade of back and forth?	8 America?
9 (Exhibit Number 37 was marked for	9 A. That's who had the -- that's whose account
10 identification.)	10 it was.
11 Q. (By Mr. Kratenstein) Well, I do want to	11 Q. And you would hold securities at National
12 get into -- and I don't mean to go through a	12 Bank of North America; is that correct?
13 charade. I just want to get through the documents	13 A. Sometimes, yes.
14 quickly, which I will quickly. I'm almost done with	14 Q. I'm going to turn you to a specific page,
15 these --	15 0964437. Do you see towards the bottom of that page
16 A. Okay.	16 -- 964437 everybody. Tell me when you're there.
17 Q. -- and then we'll be done. There are just	17 MS. DASARO: Got it. Thank you.
18 some specific ones I need to make sure of. I'm	18 Q. (By Mr. Kratenstein) If you look at the
19 marking Exhibit 37. Actually, there's a two-page	19 bottom of the page four entries up there's that RCA
20 document. This is part of this exhibit. Didn't get	20 convertible bond we talked about earlier. Do you
21 stapled for some reason. Here's this one. Just a	21 see that?
22 couple more of these and then we'll be done. You	22 A. Yes.
23 see this is a December 31, 1981 Maurice Sage Trust	23 Q. And it's listed as being at the National
24 statement?	24 Bank of North America. Do you see that?
25 A. Yes.	25 A. Yes.

9 (Pages 415 - 418)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

<p style="text-align: right;">Page 419</p> <p>1 Q. So does that mean that that bond was held 2 at the National Bank of North America?</p> <p>3 MS. FEIN: Objection to form.</p> <p>4 THE WITNESS: It depends upon -- yes, but 5 depending upon what role they were acting as. They 6 could have -- they could have cleared their 7 transactions through somewhere else, through another 8 depository. I have no way of knowing that.</p> <p>9 Q. (By Mr. Kratenstein) Okay. But you are I 10 take it based on your prior testimony confident that 11 this is a real bond that was held somewhere?</p> <p>12 A. Correct.</p> <p>13 MR. KRATENSTEIN: Thank you. You can put 14 that document aside.</p> <p>15 (Exhibit Number 39 was marked for 16 identification.)</p> <p>17 Q. (By Mr. Kratenstein) This is Exhibit 39. 18 You see, Mr. Madoff, this is another National Bank 19 of North America ledger?</p> <p>20 A. Correct.</p> <p>21 Q. This one dated January 31, 1983?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And this one shows -- this is a 24 document that also would have been generated in the 25 ordinary course of your firm's business?</p>	<p style="text-align: right;">Page 421</p> <p>1 Mr. Madoff, do you see that this is a June 30, 1986 2 account statement for the Maurice Sage Trust?</p> <p>3 A. Yes.</p> <p>4 Q. Another statement that would have been 5 generated in the ordinary course of your firm's 6 business?</p> <p>7 A. Yes.</p> <p>8 Q. Do you see that it shows that RCA bond we 9 talked about earlier being sold on or around 10 June 19th, 1986, top entry?</p> <p>11 A. Yes.</p> <p>12 Q. And, again, that was a real sale?</p> <p>13 A. Yes.</p> <p>14 Q. Actual transaction; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Thank you. You can put that document 17 aside. I'm going to switch topics. In addition to 18 convertible bond arbitrage trading, did your firm do 19 trading or other types of arbitrage trading?</p> <p>20 A. Yes.</p> <p>21 Q. Did that include -- have you heard of the 22 term corporate events arbitrage?</p> <p>23 A. Yes.</p> <p>24 Q. What is that?</p> <p>25 A. It's when -- it could be a stock split, it</p>
<p style="text-align: right;">Page 420</p> <p>1 A. Correct.</p> <p>2 Q. It shows various instruments on this 3 document. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Including various bonds, et cetera. Do you 6 see that?</p> <p>7 A. Correct.</p> <p>8 Q. And would these have all, again, been 9 actual real positions?</p> <p>10 A. Correct.</p> <p>11 Q. You held securities at other banks as well; 12 is that right?</p> <p>13 A. Correct.</p> <p>14 Q. They included Chase Manhattan, Continental, 15 Commercial Bank of North America, Meadowbrook, 16 Marine Midland, Barclays, Bear Stearns, National 17 Westminster Bank and Bankers Trust; is that correct?</p> <p>18 MS. FEIN: Objection to form.</p> <p>19 THE WITNESS: Correct, plus other 20 brokerage firms.</p> <p>21 MR. KRATENSTEIN: Thank you. You can put 22 that document aside.</p> <p>23 (Exhibit Number 40 was marked for 24 identification.)</p> <p>25 Q. (By Mr. Kratenstein) There's Exhibit 40.</p>	<p style="text-align: right;">Page 422</p> <p>1 could be a special dividend payment, could be any 2 number of events that happened in a particular 3 company.</p> <p>4 Q. You described when you talked about the 5 convertible bond arbitrage trading you did something 6 called legging in?</p> <p>7 A. Correct.</p> <p>8 Q. Which I believe you described as 9 accumulating a position over time and then averaging 10 a price; is that right?</p> <p>11 MS. FEIN: Objection to form.</p> <p>12 THE WITNESS: That's correct.</p> <p>13 Q. (By Mr. Kratenstein) That's correct; 14 right?</p> <p>15 A. Yes.</p> <p>16 Q. When you did these other corporate events 17 arbitrage, would you also leg in?</p> <p>18 A. Yes.</p> <p>19 (Exhibit Number 41 was marked for 20 identification.)</p> <p>21 Q. (By Mr. Kratenstein) I'm showing you 22 Exhibit 41. Mr. Madoff, do you see that this is a 23 statement from Sage Realty dated May 31, 1994?</p> <p>24 A. Yes.</p> <p>25 Q. And do you see in the middle of the</p>

10 (Pages 419 - 422)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

<p style="text-align: right;">Page 423</p> <p>1 statement there are transactions involving General 2 Electric Company including a stock split? 3 A. Correct, yes. 4 Q. Could you describe what that transaction 5 is? 6 A. It's the company splits their stock two for 7 one or any number of variables. 8 Q. And in this case it appears that you are 9 buying General Electric stock, 2,099 shares, on or 10 around May 6th, 1994; is that correct? 11 A. Correct. 12 Q. And that's before a two-to-one stock split? 13 A. Correct. 14 Q. And then there's a sale of 4,198 shares in 15 two pieces on or around May 23rd; is that correct? 16 A. Correct. 17 Q. And is this an example of the stock split 18 arbitrage that you were discussing earlier? 19 A. Correct. 20 Q. Would this have been an actual transaction? 21 A. Yes. 22 MR. KRATENSTEIN: You can put that 23 document aside. 24 (Exhibit Number 42 was marked for 25 identification.)</p>	<p style="text-align: right;">Page 425</p> <p>1 MR. KRATENSTEIN: Let me see. 2 MS. FEIN: Sorry. This one? Yeah, sorry. 3 '94, yeah. 4 MR. KRATENSTEIN: This is right, so you 5 have the right one. I apologize. That's the right 6 one. 7 MS. FEIN: Okay. 8 MS. CHAITMAN: Which is the right one? 9 MR. KRATENSTEIN: Which is the right one? 10 Hang on a second. You know what? Let me -- is that 11 not the NCR? Let me get the right one. 12 THE WITNESS: Do I have the right to ask a 13 question about these records? 14 MR. GOLDMAN: Why don't we -- you want to 15 do it now because we'll just take a short recess and 16 I'll talk to you for two minutes. 17 MR. KRATENSTEIN: Well, let me actually 18 remark this document. I just made a -- I have the 19 document there, so I'm going to give you the right 20 exhibit. I'm remarking 43. You can give me that 21 one back. 22 (Exhibit Number 43 was remarked for 23 identification.) 24 MS. FEIN: Why don't we do the Bates for 25 this one?</p>
<p style="text-align: right;">Page 424</p> <p>1 Q. (By Mr. Kratenstein) I'm showing you 2 Exhibit 42. If you turn to the second page of the 3 document there, let me see that. Do you see on the 4 first page of this document, which is a Sage Realty 5 statement from December 31, 1996, do you see that? 6 A. Yes. 7 Q. And do you see that there's a purchase on 8 or around December 24th, 1996 of 47,814 shares of 9 AT&T? 10 A. Correct. 11 (Exhibit Number 43 was marked for 12 identification.) 13 Q. (By Mr. Kratenstein) Do you see that? 14 Now, let me show you another document. Just keep 15 that in mind. This is Exhibit 43. And do you see 16 that this is a Sage -- yep? Okay. I apologize. 17 MS. CHAITMAN: Thank you. 18 Q. (By Mr. Kratenstein) Do you see that this 19 is a Sage Realty statement dated January 31, 1997? 20 MS. FEIN: Objection. 21 THE WITNESS: Correct, '94. 22 MR. KRATENSTEIN: Sorry. We're right. We 23 may have the wrong -- hang on a second. Let me just 24 check this. 25 MS. FEIN: Yeah. Mine has '96.</p>	<p style="text-align: right;">Page 426</p> <p>1 MR. KRATENSTEIN: This one is -- yeah, 2 sure. This one is Sage 0009352 through 53. 3 MS. FEIN: Okay. Thank you. 4 Q. (By Mr. Kratenstein) And do you see -- 5 MS. CHAITMAN: Now I need one, too. 6 Sorry. 7 MR. KRATENSTEIN: That's fine. 8 MS. CHAITMAN: Thank you. 9 Q. (By Mr. Kratenstein) Sorry about that. 10 And do you see here this is now a January 31, 1997 11 Sage Realty statement? Do you see that? 12 A. Yes. 13 Q. And you see now this is the year -- so in 14 the first document we saw, Exhibit 42, that was at 15 the end of the year 1996 and this is in the new 16 year, 1997. Do you see that? 17 A. Yes. 18 Q. And at the top there's a transaction. It 19 says NCR Corp spin-off from AT&T Corp. And then 20 there are various AT&T and NCR transactions. Do you 21 see that? 22 A. Yes. 23 Q. Can you describe what this transaction is? 24 A. It looks like a distribution of -- AT&T 25 went through a whole series of divestitures of their</p>

11 (Pages 423 - 426)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

<p style="text-align: right;">Page 427</p> <p>1 other companies, which was referred to as baby 2 bells. I'm not sure what period that they took 3 place, but we were a major market maker in AT&T 4 forever over the 50 years that I was in business. 5 So there were lots of events regarding AT&T and I'm 6 assuming this is one of them.</p> <p>7 Q. Okay. And this trade if we look at 8 Exhibits 42 and 43, this trade involves if I'm not 9 mistaken buying AT&T before the spin-off and then 10 after the spin-off selling AT&T as well as newly 11 received NCR shares?</p> <p>12 A. Correct.</p> <p>13 Q. Because AT&T had spun off NCR?</p> <p>14 A. Correct.</p> <p>15 Q. And what's the idea behind that? That the 16 spin-off creates greater value?</p> <p>17 A. Yes.</p> <p>18 Q. Was this an actual transaction, a real 19 transaction?</p> <p>20 A. Yes.</p> <p>21 Q. You can put that document aside. By this, 22 I mean, the transactions we see on 42 and 43, real 23 transactions?</p> <p>24 A. Yes.</p> <p>25 MR. KRATENSTEIN: Thank you. One more,</p>	<p style="text-align: right;">Page 429</p> <p>1 THE WITNESS: Possibly. 2 Q. (By Mr. Kratenstein) Your answer was? 3 A. Possibly. 4 Q. Thank you. Would this transaction have 5 been an actual real transaction as reflected on this 6 statement? 7 A. Correct. 8 Q. In terms of your corporate event arbitrage 9 trading, would you sometimes take market risk over a 10 period of time of weeks? 11 A. Correct. 12 Q. You can put that aside. Do you want to 13 take a break now? We're changing topics. 14 MR. GOLDMAN: Yeah. You wanted to ask me 15 a question, so let's go in the other room. You can 16 ask me what you want to ask me and then we'll see. 17 THE VIDEOGRAPHER: Going off the record. 18 The time is 9:40. 19 (A recess was taken.) 20 THE VIDEOGRAPHER: Back on the record. 21 The time is 9:51. 22 (Exhibit Number 45 was marked for 23 identification.) 24 Q. (By Mr. Kratenstein) Mr. Madoff, we talked 25 about the fact that the Sages had an account called</p>
<p style="text-align: right;">Page 428</p> <p>1 please. And this is the one I just showed you a 2 minute ago. That's going to be 44 now.</p> <p>3 MS. CHAITMAN: I have that one.</p> <p>4 MR. KRATENSTEIN: You have that one?</p> <p>5 MS. CHAITMAN: Yeah. You gave it to me 6 before.</p> <p>7 MR. KRATENSTEIN: Thanks, yes.</p> <p>8 (Exhibit Number 44 was marked for 9 identification.)</p> <p>10 Q. (By Mr. Kratenstein) Mr. Madoff, do you 11 see that this is a Sage Realty statement dated 12 July 31, 1994?</p> <p>13 A. Yes.</p> <p>14 Q. And do you see that there are various 15 transactions on this statement involving UAL?</p> <p>16 A. Yes.</p> <p>17 Q. Can you tell from looking at this what this 18 transaction entails?</p> <p>19 A. Similar to the other transaction, looks 20 like a spin-off of some sort.</p> <p>21 Q. Is it fair to say that this is a trade to 22 buy UAL before the -- a recapitalization and then 23 selling the stock after receiving a cash 24 distribution?</p> <p>25 MS. FEIN: Objection.</p>	<p style="text-align: right;">Page 430</p> <p>1 Sage Associates, so I'm going to ask a few questions 2 about that account now. I'm going to start with 3 another document we're going to mark as Exhibit 4 Number 45. I'm going to focus my questions on the 5 first page and then the page that is Bates labeled 6 MF 0091185. So I'm just going to -- I'll hand out 7 copies to everyone else.</p> <p>8 A. Your records.</p> <p>9 MR. KRATENSTEIN: Yeah. There you go.</p> <p>10 MS. CHAITMAN: I'm sorry. Take note of 11 that Bates number. Was that 185?</p> <p>12 Q. (By Mr. Kratenstein) 941185. I'm going to 13 start on the first page and then I'll flip it for 14 you. So if you don't mind, I'll just keep my finger 15 there so we can get to the page, which will help us 16 move through this relatively quickly. Mr. Madoff, 17 you see that this is a document called house 17 18 stock record summary through 5-31-85?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recognize this type of document?</p> <p>21 A. Yes.</p> <p>22 Q. What is it?</p> <p>23 A. It's usually a month-end report that lists 24 the securities in each account.</p> <p>25 Q. And these reports would be generated in the</p>

12 (Pages 427 - 430)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

<p style="text-align: right;">Page 431</p> <p>1 ordinary course of your firm business?</p> <p>2 A. Correct.</p> <p>3 Q. And would they be generated on or around</p> <p>4 the date indicated at the top, May 31, 1985 in this</p> <p>5 case?</p> <p>6 A. Correct.</p> <p>7 Q. And were these reports like this kept on</p> <p>8 your firm's premises?</p> <p>9 A. Yes.</p> <p>10 Q. And created in the ordinary course of</p> <p>11 business?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Now I'm going to turn to the page I</p> <p>14 indicated, which is again MF 00941185. And are you</p> <p>15 there, counsel?</p> <p>16 MS. CHAITMAN: Yeah.</p> <p>17 Q. (By Mr. Kratenstein) Okay. I'm going to</p> <p>18 draw your attention to -- it's actually this page</p> <p>19 right here. See the bottom of the page, towards the</p> <p>20 bottom there's a Walt Disney Productions entry. Do</p> <p>21 you see that?</p> <p>22 MS. FEIN: Is this the page ending in 184,</p> <p>23 Andrew?</p> <p>24 MR. KRATENSTEIN: 85.</p> <p>25 MS. FEIN: It's 85?</p>	<p style="text-align: right;">Page 433</p> <p>1 Q. And then there's an entry at the bottom</p> <p>2 next to that 34,780 shares for the National</p> <p>3 Westminster Bank USA. Do you see that?</p> <p>4 A. Correct.</p> <p>5 Q. What does that mean, that all the stock is</p> <p>6 listed next to that bank?</p> <p>7 A. That the securities are held at that bank</p> <p>8 or one of their clearing agents.</p> <p>9 Q. And this is a 1985 report. So I take it</p> <p>10 from your prior testimony that these are actual</p> <p>11 securities that were actually held at the National</p> <p>12 Westminster Bank?</p> <p>13 A. Correct.</p> <p>14 MR. KRATENSTEIN: I'm going to move this</p> <p>15 document and mark as Exhibit 46 another document.</p> <p>16 (Exhibit Number 46 was marked for</p> <p>17 identification.)</p> <p>18 Q. (By Mr. Kratenstein) Mr. Madoff, do you</p> <p>19 see that what we've marked as Exhibit Number 46 is a</p> <p>20 report that at the top says 5-31-85, so May 31,</p> <p>21 1985, National Westminster Bank USA? Do you see</p> <p>22 that?</p> <p>23 A. Yes.</p> <p>24 Q. And do you recognize this type of document?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 432</p> <p>1 MR. KRATENSTEIN: Yes.</p> <p>2 MS. FEIN: Okay.</p> <p>3 Q. (By Mr. Kratenstein) Do you see Walt</p> <p>4 Disney Productions right here?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So and do you see under Walt Disney</p> <p>7 Productions there are various customer accounts</p> <p>8 listed including Sage Associates and Maurice Sage</p> <p>9 Trust?</p> <p>10 A. Yes, yes.</p> <p>11 Q. And do you see according to this report</p> <p>12 there are 9,000 shares of Walt Disney in Sage</p> <p>13 Associates and 5,000 in Maurice Sage Trust?</p> <p>14 A. Correct.</p> <p>15 Q. And according to this report, when you add</p> <p>16 up all of the customer's holdings, so in addition to</p> <p>17 Sage Associates and Maurice Sage Trust, there are</p> <p>18 entries for Appleby and then other customers. Do</p> <p>19 you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And they add up to 34,780 shares. Do you</p> <p>22 see that?</p> <p>23 A. Correct.</p> <p>24 Q. That's of Disney stock; correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 434</p> <p>1 Q. What is it?</p> <p>2 A. It's activity in the account of National</p> <p>3 Westminster Bank.</p> <p>4 Q. And, again, is this a document that would</p> <p>5 have been created in the ordinary course of your</p> <p>6 firm's business?</p> <p>7 A. Yes.</p> <p>8 Q. And would have been kept at your firm's</p> <p>9 premises?</p> <p>10 A. Yes.</p> <p>11 Q. That would have been generated on or around</p> <p>12 May 31, 1985?</p> <p>13 A. Correct.</p> <p>14 Q. And would have been maintained in the</p> <p>15 ordinary course of your firm's business; is that</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. And if you turn -- and I'll do this -- to</p> <p>19 page 965279, if you look in the middle of the page</p> <p>20 -- is everybody with me?</p> <p>21 MS. DASARO: Yeah.</p> <p>22 Q. (By Mr. Kratenstein) At 965279 do you see</p> <p>23 that there are 34,780 shares of Walt Disney stock</p> <p>24 listed as being held at the National Westminster</p> <p>25 Bank?</p>

13 (Pages 431 - 434)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

Page 435	Page 437
<p>1 A. Correct.</p> <p>2 Q. And that matches up with the previous record that we just saw?</p> <p>4 A. Correct.</p> <p>5 Q. And these are actual securities held at the National Westminster Bank?</p> <p>7 A. Correct.</p> <p>8 MR. KRATENSTEIN: Thank you.</p> <p>9 MS. CHAITMAN: Oh, I see. Right here?</p> <p>10 MR. KRATENSTEIN: Yes. Top entry in the middle.</p> <p>12 MS. CHAITMAN: Thank you.</p> <p>13 MR. KRATENSTEIN: Okay. I want to make a suggestion. I want to take a short break and just sticker a whole bunch of exhibits instead of doing it on the record and then that way it will be a lot faster when we're on the record.</p> <p>18 MS. CHAITMAN: Why don't you let me do it for you?</p> <p>20 MR. KRATENSTEIN: I think because I know where I want to go.</p> <p>22 MS. CHAITMAN: Oh, okay.</p> <p>23 MR. KRATENSTEIN: It will take five minutes. Let's just do that.</p> <p>25 MS. DASARO: Okay.</p>	<p>1 firm?</p> <p>2 A. Correct.</p> <p>3 Q. Probably by Annette Bongiorno?</p> <p>4 A. Correct.</p> <p>5 Q. By the way, was Ms. Bongiorno, do you recall if she was left handed?</p> <p>7 A. I believe so.</p> <p>8 Q. So when she made a check mark, it would be a left-handed check mark?</p> <p>10 A. Yes.</p> <p>11 Q. Do you see that the letter begins Dear Bernie, after discussions with Paul we have come up with the following plan with regards to the Sage Associates IS-004 and Sage Associates II IS-005 accounts. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. First of all, do you know who Mr. Sage is referring to when he says Paul?</p> <p>19 A. I would assume it's his accountant.</p> <p>20 Q. And who is he?</p> <p>21 A. I believe it's Paul Koenigsberg.</p> <p>22 Q. And he says we have come up with the following plan. Do you know what -- have an understanding of what he means when he says the following plan?</p>
Page 436	Page 438
<p>1 MR. KRATENSTEIN: Let's take a quick break. I don't want to waste your time on the record. You can get up and stretch.</p> <p>4 THE VIDEOGRAPHER: Going off the record. The time is 9:57.</p> <p>6 (A recess was taken and Exhibit Number 47 was marked for identification.)</p> <p>8 THE VIDEOGRAPHER: Back on the record. The time is 10:13.</p> <p>10 Q. (By Mr. Kratenstein) Welcome back, Mr. Madoff. You had talked earlier about the Sages directing you to do trades in their accounts. I want to show you a few documents on that topic. I'm showing you Exhibit Number 47. Mr. Madoff, do you see that this is a letter from Malcolm Sage to you?</p> <p>16 A. Yes.</p> <p>17 Q. It's on the letterhead of Sage Associates and Sage Associates II?</p> <p>19 A. Yes.</p> <p>20 Q. Those were each Sage accounts?</p> <p>21 A. Yes.</p> <p>22 Q. And do you have any reason to believe that you did not receive this letter?</p> <p>24 A. No.</p> <p>25 Q. This letter would have been kept by your</p>	<p>1 A. I assume his tax plan.</p> <p>2 Q. And do you see the backwards lefty checks on this letter?</p> <p>4 A. Correct.</p> <p>5 Q. Do you believe those to be Ms. Bongiorno's?</p> <p>6 A. Correct.</p> <p>7 Q. And do you see in the letter Mr. Sage is directing you to take various actions with respect to securities in the Sage Associates and Sage Associates II accounts?</p> <p>11 A. Correct.</p> <p>12 Q. For example, in the first entry with respect to Abercrombie & Fitch he says please deliver the short position in the seven account to the three account to close out this position. Do you see that?</p> <p>17 A. Correct.</p> <p>18 Q. And do you recall that Mr. Sage or the Sages rather had subaccounts within Sage Associates for long positions, short against the box positions and naked short positions?</p> <p>22 A. Correct.</p> <p>23 Q. Does it make sense to you that three would have been the long position account?</p> <p>25 A. Correct.</p>

14 (Pages 435 - 438)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

<p style="text-align: right;">Page 439</p> <p>1 Q. And seven the short against the box 2 position account? 3 A. Correct. 4 Q. Eight, the naked short position account? 5 A. Yes. 6 Q. What is a short against the box? 7 A. Short against the box is when you're 8 selling -- you're selling stock that you are also 9 long in another account. You're long and short the 10 same security. 11 Q. Does it mean you're actually holding the 12 security when you go short or no? 13 A. Yes. 14 Q. And what's -- 15 A. Well, I have to correct that. If it's the 16 short against the box account, you would be long 17 security as well. You could -- if it was what's 18 called a naked short, you're not long in the 19 corresponding security. 20 Q. And do you see that there are obviously 21 various transactions here for -- instructions for 22 Abercrombie, Dow, International Paper, Oracle and 23 Qualcomm? Do you see that? 24 A. Correct. 25 Q. And then he asks you at the end in .1(f) to</p>	<p style="text-align: right;">Page 441</p> <p>1 what we've marked as Exhibit Number 48, and you can 2 compare that with this. If you look at this 3 document, you see that this is the Sage Associates 4 statement from November 30th, 2001? 5 A. Yes. 6 Q. And can you see on this statement the 7 transactions that Mr. Sage directed you to do in his 8 letter that we marked as Exhibit 47? 9 A. Correct. 10 Q. And you would have performed those 11 transactions? 12 A. Yes. 13 Q. Would they have been real transactions? 14 A. Yes. 15 Q. You can put that document aside. And by 16 the way, just note before actually putting it aside 17 that this is the Sage Associates subaccount numbered 18 seven. Do you see that? 19 A. Correct. 20 (Exhibit Number 49 was marked for 21 identification.) 22 Q. (By Mr. Kratenstein) Okay. And then now 23 I'm going to give you Exhibit Number 49, which is 24 Sage Associates subaccount three from the same date. 25 Do you see that?</p>
<p style="text-align: right;">Page 440</p> <p>1 please realize the approximately \$600,000 of gain in 2 the eight account; correct? 3 A. Correct. 4 Q. Which would be the naked short account? 5 A. Yes. 6 Q. And then there are instructions for Gateway 7 and Coca-Cola in Sage Associates II. Do you see 8 that? 9 A. Yes. 10 Q. And at the end he says after these steps 11 have been taken, we would like to withdraw the sum 12 of \$6 million from Sage Associates. Do you see 13 that? 14 A. Correct. 15 Q. And then he asks you if you have any 16 questions, to call him or Paul; right? 17 A. Correct. 18 Q. Would you have followed these instructions? 19 A. Yes. 20 Q. How do you know that? 21 A. Just clients telling us to. We have no 22 choice. 23 (Exhibit Number 48 was marked for 24 identification.) 25 Q. (By Mr. Kratenstein) I'm going to show you</p>	<p style="text-align: right;">Page 442</p> <p>1 A. Yes. 2 Q. And, again, because there were -- he was 3 asking you to transfer between the seven and three 4 accounts. Do you see the flip side on this? 5 A. Yes. 6 Q. Thank you. And then you recall at the end 7 of the letter he asked you to realize -- he asked 8 you to recognize a \$600,000 gain. Do you recall 9 that? 10 A. Correct. 11 (Exhibit Number 50 was marked for 12 identification.) 13 MR. KRATENSTEIN: Here's Exhibit 50. 14 There's an extra copy. 15 MS. FEIN: Okay. 16 Q. (By Mr. Kratenstein) And do you see the 17 \$600,000 being recognized -- 18 A. Yes. 19 Q. -- in Exhibit 50? 20 A. Yes. 21 (Exhibit Numbers 51, 52 and 53 were marked 22 for identification.) 23 Q. (By Mr. Kratenstein) Thank you. I'm going 24 to hand you a group of documents, which I'll 25 represent to you are the confirms reflecting all</p>

15 (Pages 439 - 442)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

Page 443	Page 445
<p>1 these transactions. And I'm just going to ask you 2 when you have these in front of you are these 3 documents the confirms that reflect the transactions 4 that we just saw in the statements.</p> <p>5 Okay. So I'm just going to put them in 6 front of you and I'm going to ask you to confirm 7 that that's what they at least appear to you to be. 8 So here's Exhibit -- and just wait until I give you 9 them all. Here's Exhibit 51. This is Exhibit 52.</p> <p>10 MR. GOLDMAN: Are those exhibits multiple 11 pages, just so the record is clear?</p> <p>12 MS. CHAITMAN: We didn't get 50.</p> <p>13 MR. KRATENSTEIN: 50 was a one page.</p> <p>14 MS. CHAITMAN: Yeah, but I don't have 51. 15 Did you get two copies of 51?</p> <p>16 MS. FEIN: No.</p> <p>17 THE WITNESS: Helen, move your soda 18 because he's about to knock it over.</p> <p>19 MS. CHAITMAN: Oh, thank you.</p> <p>20 THE WITNESS: I don't want to have to go 21 through this again.</p> <p>22 Q. (By Mr. Kratenstein) Here's 53. Just take 23 a look at it while I'm handing them out and see if 24 you can flip through and just make sure you agree 25 whether these are the confirms showing the trades</p>	<p>1 MR. GOLDMAN: Are you looking at 2 Exhibit 53?</p> <p>3 THE WITNESS: Fifty-three and four.</p> <p>4 MR. GOLDMAN: Okay. Under 53, the top 5 page is the memorandum, I think, you suggested for 6 the transfer of money. Is there anything else 7 attached to that? Fifty-three, look at 53.</p> <p>8 THE WITNESS: Yeah. I have 53.</p> <p>9 MR. GOLDMAN: Okay. What's underneath it?</p> <p>10 THE WITNESS: Yeah, the confirmation.</p> <p>11 Q. (By Mr. Kratenstein) Is that the confirm?</p> <p>12 A. Confirmation.</p> <p>13 Q. So that's the confirm, the second page of 14 53?</p> <p>15 A. Right.</p> <p>16 MR. KRATENSTEIN: Thank you.</p> <p>17 MS. FEIN: Sorry. Just to clarify, that 18 second page isn't the same as the first page. The 19 transaction isn't the same. My understanding that 20 the memo -- or the difference between the memo and 21 the confirm I understand, but the transaction is a 22 different dollar amount.</p> <p>23 MR. KRATENSTEIN: Well, there are actually 24 several. If you look, there are multiple 25 transactions.</p>
Page 444	Page 446
<p>1 that we saw in the last document?</p> <p>2 MS. CHAITMAN: Can you --</p> <p>3 Q. (By Mr. Kratenstein) Do you 4 understand what -- what is Exhibit -- what is that, 5 Mr. Madoff? Exhibit 53, what is that?</p> <p>6 A. This is just a memo of transferring monies.</p> <p>7 Q. Is it a -- what is known as a trade 8 confirm?</p> <p>9 A. No.</p> <p>10 Q. Okay. It's a memo. So what does that 11 mean?</p> <p>12 A. It's a memo. It's a making note of a 13 particular money transaction or receiving the 14 movement of securities. Confirmation is what 15 appears behind it.</p> <p>16 Q. You see what's behind -- I see. So --</p> <p>17 A. Confirmation is an actual purchase and sale 18 of a transaction.</p> <p>19 Q. Okay. I see. And so when you see -- these 20 are memos you're saying, Exhibit 53, for example?</p> <p>21 A. Yes.</p> <p>22 (Exhibit Number 54 was marked for 23 identification.)</p> <p>24 Q. (By Mr. Kratenstein) Okay. And here's 25 Exhibit 54.</p>	<p>1 MS. FEIN: Okay. So --</p> <p>2 MR. KRATENSTEIN: So they add up, I 3 believe, but you can see. You can look. There are 4 multiple. It's multiple transactions. You want a 5 minute?</p> <p>6 MS. FEIN: I can't see the math. It looks 7 like the last page, the last page ending in 4294 8 corresponds to the memo page that's the page ending 9 in 290, but the two pages in between appear to be 10 different.</p> <p>11 MR. KRATENSTEIN: Let's see. Which number 12 is that? What's the first page number?</p> <p>13 THE WITNESS: 4290.</p> <p>14 MR. KRATENSTEIN: Okay. And then there's 15 another, 4291, and then there are 4292, 93, 94.</p> <p>16 MS. FEIN: Yeah. And, actually, my copy 17 doesn't have 4291. It just goes from 4290 to 4292, 18 but 4292 and 4293 appear to be different 19 transactions.</p> <p>20 MR. KRATENSTEIN: Let me take a look at 21 it. Fifty-three this is? Here. Well, here's 4-2. 22 This is Exhibit 16. We'll get it worked out at a 23 break. Let me do it at a break. I don't want to 24 take up the time now, but thank you.</p> <p>25 MS. FEIN: I understand.</p>

16 (Pages 443 - 446)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

<p style="text-align: right;">Page 447</p> <p>1 MR. GOLDMAN: I only did that so the 2 record was clear. As I said, there are multiple 3 pages in each exhibit.</p> <p>4 MR. KRATENSTEIN: Right.</p> <p>5 MR. GOLDMAN: Once you go through it --</p> <p>6 MS. CHAITMAN: What is the exhibit number 7 that you're talking about?</p> <p>8 MR. KRATENSTEIN: Fifty-three.</p> <p>9 MS. FEIN: Fifty-three. My concern was 10 the same. It was just about getting the record 11 clear. So if we clear it up on a break, we can do 12 it that way.</p> <p>13 Q. (By Mr. Kratenstein) Yeah, sure. And then 14 Exhibit 54 you have in front of you?</p> <p>15 A. Yes.</p> <p>16 Q. Does that show in addition to a memo 17 confirms behind?</p> <p>18 A. Yes.</p> <p>19 (Exhibit Number 55 was marked for 20 identification.)</p> <p>21 Q. (By Mr. Kratenstein) Okay. That's this 22 one. And now I'm going to give you 55, which again 23 is a memo followed by the confirms?</p> <p>24 A. Yes.</p> <p>25 MS. FEIN: Thank you.</p>	<p style="text-align: right;">Page 449</p> <p>1 MR. KRATENSTEIN: Let me look. Which page 2 is missing?</p> <p>3 MS. FEIN: For me it's missing what would 4 be 4223. It goes from 4222 to 4224.</p> <p>5 MR. KRATENSTEIN: This has -- it does. So 6 mine is marked the same way. It's marked the same 7 way.</p> <p>8 MS. FEIN: Understood.</p> <p>9 Q. (By Mr. Kratenstein) Okay. All right. So 10 is it fair to say that the documents that we have 11 now marked as Exhibits 51 to 55 reflect the 12 transactions that we saw in the letter that we 13 marked as Exhibit 47?</p> <p>14 MS. FEIN: Objection to form.</p> <p>15 THE WITNESS: Correct.</p> <p>16 (Exhibit Number 57 was marked for 17 identification.)</p> <p>18 Q. (By Mr. Kratenstein) Thank you. Now I'm 19 going to mark Sage Associates two statements 20 quickly. That was for Sage Associates. Those were 21 the Sage Associates trades. Now, two Sage 22 Associates II transactions that were shown in the 23 letter which is Exhibit 47, I'm just going to show 24 you the statements now. That's Exhibit 57. Put 25 these here. Keep this letter here. Exhibit 57.</p>
<p style="text-align: right;">Page 448</p> <p>1 THE WITNESS: No. Wait a minute. I don't 2 see a confirmation. I see just memos.</p> <p>3 Q. (By Mr. Kratenstein) Just memos for 55?</p> <p>4 A. Right.</p> <p>5 MR. KRATENSTEIN: Okay.</p> <p>6 MS. CHAITMAN: How about the last page? 7 Is that a confirm?</p> <p>8 MR. GOLDMAN: Yeah.</p> <p>9 THE WITNESS: No. These are just --</p> <p>10 MR. GOLDMAN: Go to the last page.</p> <p>11 MR. KRATENSTEIN: The last page, 224.</p> <p>12 THE WITNESS: Yes.</p> <p>13 Q. (By Mr. Kratenstein) That's a confirm?</p> <p>14 A. Yes.</p> <p>15 (Exhibit Number 56 was marked for 16 identification.)</p> <p>17 Q. (By Mr. Kratenstein) 224 is a confirm. 18 Thank you. Okay. And then the last one for this 19 set is number 56, which is the \$600,000 we saw 20 earlier.</p> <p>21 MR. GOLDMAN: You okay? You look like you 22 had a --</p> <p>23 MS. FEIN: Well, Exhibit 55 on my copy is 24 missing a page but it may be the one that's missing 25 a page, so --</p>	<p style="text-align: right;">Page 450</p> <p>1 MS. FEIN: Thank you.</p> <p>2 Q. (By Mr. Kratenstein) And if you see at the 3 end of the letter, he talks about the Gateway 4 delivery of short positions and closing out 5 Coca-Cola. And if you look at Exhibit Number 20, do 6 you see the Gateway and Coca-Cola transactions 7 reflected on this statement?</p> <p>8 A. Yes.</p> <p>9 (Exhibit Number 58 was marked for 10 identification.)</p> <p>11 Q. (By Mr. Kratenstein) And then looking at 12 Exhibit Number 58 --</p> <p>13 MS. CHAITMAN: Did you mean to say 14 Exhibit 20?</p> <p>15 MS. FEIN: Did you mean Exhibit 57?</p> <p>16 MR. KRATENSTEIN: I said 57. What did I 17 say?</p> <p>18 MS. CHAITMAN: 20.</p> <p>19 MS. FEIN: 20.</p> <p>20 Q. (By Mr. Kratenstein) So do you see on 21 Exhibit 57, sorry, the Sage Associates II, the Sage 22 Associates II transactions for Gateway and Coca-Cola 23 reflected on Exhibit 47?</p> <p>24 A. Yes.</p> <p>25 Q. And now Exhibit 58.</p>

17 (Pages 447 - 450)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

Page 451	Page 453
1 MS. CHAITMAN: What you're saying is 2 Exhibit 57 shows the transactions that Malcolm 3 instructed?	1 letter from Mr. Sage to you on the letterhead of 2 Sage Associates and the Maurice S. Sage Foundation? 3 A. Yes.
4 MR. KRATENSTEIN: Correct.	4 Q. Do you have any reason to believe that you 5 did not receive this letter?
5 MS. CHAITMAN: Okay.	6 A. No.
6 Q. (By Mr. Kratenstein) Do you agree with 7 that, Mr. Madoff?	7 Q. Do you believe the handwriting on this 8 letter to be Annette Bongiorno's?
8 A. Yes.	9 A. Yes.
9 Q. Thank you. And Exhibit 58, which is the 10 other side of the Sage Associates II transaction, do 11 you see again the Gateway transfer to that account 12 as directed by Mr. Sage --	10 Q. Do you see that in this letter Mr. Sage 11 writes, although it's addressed to you, he writes 12 Dear Annette. Do you see that?
13 A. Yes.	13 A. Correct.
14 Q. -- in his letter?	14 Q. And that's Ms. Bongiorno?
15 A. Uh-huh.	15 A. Yes.
16 Q. Correct?	16 Q. He writes after discussions with Paul we 17 have come up with the following plan with regard to 18 the Sage Associates IS-0004 and Maurice S. Sage 19 Foundation, Inc. IS-0197 accounts. Do you see that?
17 A. Yes.	20 A. Yes.
18 MS. FEIN: Objection to form.	21 Q. And, again, do you have any understanding 22 of what plan Mr. Sage was talking about?
19 (Exhibit Numbers 59 and 60 were marked for 20 identification.)	23 A. It's a tax plan.
21 Q. (By Mr. Kratenstein) Thank you. And here 22 are memos and confirms, Exhibit 59. This is going 23 to be the same set of questions, whether the 24 confirms also reflect this time Sage Associates II 25 activity we see in the letter that was marked as	24 Q. And do you have any understanding of what 25 he was trying to accomplish tax-wise?
Page 452	Page 454
1 Exhibit 47?	1 A. Yes.
2 MS. FEIN: Objection to form.	2 Q. What was that?
3 THE WITNESS: Yes.	3 A. To realize certain gains, gains and losses 4 based upon making a sale of security.
4 MR. KRATENSTEIN: Thank you. Do you have 5 this one, Amanda?	5 Q. Okay. And do you see that he for Sage 6 Associates directs you with respect to Emulex stock 7 to please deliver the short position --
6 MS. FEIN: I do. Thank you.	8 A. Right.
7 MS. CHAITMAN: What number is this?	9 Q. -- in the seven account to the three 10 account to close out this position; correct?
8 MS. FEIN: 60. Andrew, was your question 9 with respect to Exhibits 59 and 60?	11 MS. FEIN: Objection to form.
10 Q. (By Mr. Kratenstein) Yeah. I'm asking 11 whether on 59 and 60 they reflect the -- so it will 12 be 59 you see, Mr. Madoff, reflects the Gateway 13 transaction that is shown in Exhibit 47 at the 14 bottom under Sage Associates II; correct?	12 THE WITNESS: Correct.
15 A. Yes, correct.	13 MR. KRATENSTEIN: Sorry. What's the basis 14 for the objection?
16 Q. And Exhibit 60 shows the Coca-Cola 17 transaction --	15 MS. FEIN: You said he directs you, but 16 the letter is not only addressed to him. It also 17 has attention Annette Bongiorno right under the 18 addressee line.
18 A. Correct.	19 Q. (By Mr. Kratenstein) Okay. Do you see Mr. 20 Sage directing Ms. Bongiorno, who worked for you; 21 correct?
19 Q. -- and to be in Exhibit 47; correct?	22 A. Correct.
20 A. Correct.	23 Q. To please deliver the short position in the 24 seven account to the three account to close out this 25 position in Emulex. Do you see that?
21 (Exhibit Number 61 was marked for 22 identification.)	
23 Q. (By Mr. Kratenstein) Thank you. I'm going 24 to show you another letter. This is Exhibit 25 Number 61. Mr. Madoff, do you see that this is a	

18 (Pages 451 - 454)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

Page 455	Page 457
1 A. Yes.	1 Q. In this case it would be Annette because
2 Q. The amount to be delivered is the entire	2 she was working with you?
3 amount held, 220,000 shares; correct?	3 A. Right.
4 A. Correct.	4 Q. Do you know if she would have come to you
5 Q. With respect to Broadcom, Mr. Sage writes	5 -- do you know if you would have seen this letter
6 please deliver 15,000 shares in the seven account to	6 that we marked as Exhibit 61?
7 the three account. This will leave the remaining	7 A. I either would have seen it or been told
8 40,000 shares in the three and seven accounts. Do	8 about it.
9 you see that?	9 Q. By Annette?
10 A. Correct.	10 A. By Annette.
11 Q. And then with respect to the Maurice S.	11 Q. Would that be true of all written
12 Sage Foundation, Inc. account he says we would like	12 instructions from clients?
13 to withdraw the sum of \$25,000. This will not	13 A. I assume so.
14 require the sale of any stock because this sum is	14 MS. FEIN: Objection to form.
15 available in money market funds. Do you see that?	15 Q. (By Mr. Kratenstein) And why do you assume
16 A. Yes.	16 so?
17 Q. And do you see that in the handwriting for	17 A. Depends upon the -- could have been one of
18 Ms. Bongiorno the date is 12-24-02? Do you see	18 her assistants, you know, calling me if she was not
19 that?	19 available.
20 A. Yes.	20 Q. But is your point that if a client gave you
21 Q. And then he asks at the end, Mr. Sage asks	21 instructions, you'd want to know about it?
22 if you have any questions, please call him. Do you	22 MS. FEIN: Objection to form.
23 see that?	23 THE WITNESS: Correct.
24 A. Yes.	24 Q. (By Mr. Kratenstein) So we've marked
25 Q. Would you have followed these instructions?	25 Exhibit 62. And if you look at Exhibit 62, we
1 A. Yes.	1 talked about Emulex and Broadcom in the letter. And
2 Q. And that's the same reason as before,	2 do you see movements of Emulex and Broadcom as
3 because you have to follow the instructions of your	3 directed in the letter reflected in this statement
4 customers; correct?	4 that we marked as Exhibit 62?
5 A. Correct.	5 A. Yes.
6 MS. FEIN: Objection to form.	6 (Exhibit Number 63 was marked for
7 (Exhibit Number 62 was marked for	7 identification.)
8 identification.)	8 Q. (By Mr. Kratenstein) Same for Exhibit 63?
9 Q. (By Mr. Kratenstein) All right. Just	9 A. Yes.
10 going to show you a few documents concerning whether	10 Q. Same question. Do you see the movements in
11 you did follow those instructions. We'll start with	11 the Sage Associates account being directed by Mr.
12 Exhibit 62.	12 Sage in his letter that we've marked as Exhibit 61
13 MS. FEIN: Andrew, can you just clarify	13 actually on the statements being executed?
14 when you're saying you followed the instructions in	14 A. Yes.
15 your questioning?	15 (Exhibit Number 65 was marked for
16 Q. (By Mr. Kratenstein) What did you	16 identification.)
17 understand what I meant you follow the instructions?	17 Q. (By Mr. Kratenstein) And then with respect
18 A. What does it mean?	18 there was a direction on the Maurice Sage
19 Q. Yeah.	19 Foundation, so I'm going to show you Exhibit 65.
20 A. It means I did what the client asked me to	20 MS. CHAITMAN: Did we have Exhibit 64?
21 do.	21 MS. DASARO: I think, yeah.
22 Q. And would you sometimes if a client asked	22 MS. FEIN: I think this should be 64.
23 you to do something, would you -- who would you have	23 MR. KRATENSTEIN: It should be. We might
24 do it?	24 have a miss. So if we have a miss, I apologize.
25 A. Usually, you know, Annette.	25 I'm not sure what happened there. Let's just call

19 (Pages 455 - 458)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

<p style="text-align: right;">Page 459</p> <p>1 this Exhibit 65 and we'll come back and if we missed 2 64, we'll just have this gap. 3 Q. (By Mr. Kratenstein) Do you see that there 4 in the Sage -- in Exhibit 61 he's asking to withdraw 5 \$25,000 and do you see that in Exhibit Number 65, 6 the \$25,000 withdrawal? 7 A. Yes. 8 (Exhibit Numbers 66, 67 and 68 were marked 9 for identification.) 10 Q. (By Mr. Kratenstein) Finally, the memos 11 and/or confirms. I'm showing you Exhibit 66, 12 Exhibit 67 and Exhibit 68. And, again, Mr. Madoff, 13 do Exhibits 66 through 68 reflect the execution of 14 the instructions that were contained in the letter 15 that we marked as Exhibit 61? 16 A. Yes. 17 (Exhibit Number 69 was marked for 18 identification.) 19 Q. (By Mr. Kratenstein) Thank you. I'm 20 showing you Exhibit Number 69. Mr. Madoff, do you 21 see that this is a letter from Maurice Sage to 22 Annette Bongiorno and you on the letterhead of Sage 23 Associates and Sage Associates II? 24 MS. FEIN: Objection to form. 25 THE WITNESS: Yeah. From Malcolm Sage.</p>	<p style="text-align: right;">Page 461</p> <p>1 sentence and says, therefore, I assume that these 2 positions will be bought into prior to January 30 so 3 as to avoid a constructive sale. Do you see that? 4 A. Yes. 5 Q. Do you understand him to be instructing you 6 to buy into Broadcom and RJR? 7 MS. FEIN: Objection to form. 8 THE WITNESS: Yes. 9 MR. KRATENSTEIN: What's the basis for the 10 objection? 11 MS. FEIN: This letter is addressed to 12 Annette, the letterhead is Annette and it's also 13 Dear Annette and you're saying instructing you, 14 directing you. I just -- I have an objection to 15 that in the past and in the future. 16 MR. KRATENSTEIN: I will fix. Thank you. 17 Q. (By Mr. Kratenstein) Do you see that the 18 letter is addressed both to you and Ms. Bongiorno, 19 Mr. Madoff? 20 MS. FEIN: Objection. I don't -- the firm 21 name is listed here underneath Annette's name. I 22 don't see that this letter is addressed to both Mr. 23 Madoff and Annette. 24 Q. (By Mr. Kratenstein) I see. Okay. So Mr. 25 Madoff, going back to prior testimony, is this the</p>
<p style="text-align: right;">Page 460</p> <p>1 Q. (By Mr. Kratenstein) From Malcolm Sage, 2 yes. 3 A. Right, yes. 4 Q. Do you have any reason to believe that you 5 did not receive this letter? 6 A. No. 7 Q. Would it have been maintained by your firm 8 after it was received? 9 A. Yes. 10 Q. Mr. Sage writes Dear Annette, just wanted 11 to touch base with you regarding certain stocks in 12 Sage Associates IS-004 and Sage Associates II 13 IS-005. To the best of my understanding the only 14 stocks which were held short against the box and not 15 grandfathered, and the word grandfathered is in 16 quotes, with respect to the constructive sales rules 17 are Broadcom, and then he puts in parentheses Sage 18 Associates, and RJR, and then he puts in parentheses 19 Sage Associates and Sage Associates II. 20 Let me just stop there for a second. We 21 talked about what a short against the box is. Do 22 you have an understanding of what Mr. Sage meant 23 when he referred to grandfathered? 24 A. Not really. 25 Q. Okay. Therefore -- then he goes on in his</p>	<p style="text-align: right;">Page 462</p> <p>1 type of letter that you would have expected Ms. 2 Bongiorno to show you? 3 A. Yes. 4 Q. And do you have any reason to believe that 5 she did not show it to you? 6 A. Either showed me or told me on the phone. 7 Q. Okay. And when this letter says I assume, 8 Mr. Sage writes I assume that these positions will 9 be bought into prior to January 30 so as to avoid a 10 constructive sale, do you understand Mr. Sage to be 11 directing your firm to follow those instructions? 12 A. Correct. 13 (Discussion off the record.) 14 Q. (By Mr. Kratenstein) And do you have any 15 recollection of the tax law being changed with 16 respect to short against the box transactions and 17 certain of those transactions being grandfathered? 18 A. Yes, yes. 19 Q. What do you recall of that? 20 A. I recall that it happened. I can't tell 21 you the details. 22 (Exhibit Number 70 was marked for 23 identification.) 24 Q. (By Mr. Kratenstein) Okay. And now we're 25 just going to go through the same drill and I'm</p>

20 (Pages 459 - 462)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

<p style="text-align: right;">Page 463</p> <p>1 going to ask you through statements whether any of 2 these transactions being directed in Exhibit 70 show 3 -- 69 rather show up on the Sage Associates 4 statements as Exhibit 70?</p> <p>5 MS. FEIN: Objection to form. Thank you.</p> <p>6 Q. (By Mr. Kratenstein) And do you see that 7 this is a January 31, 2003 Sage Associates 8 statement?</p> <p>9 A. Yes.</p> <p>10 Q. And do you see in the middle it shows 11 buying into RJR and Broadcom?</p> <p>12 A. Yes.</p> <p>13 Q. And is that as instructed in Exhibit 69?</p> <p>14 A. Yes.</p> <p>15 MR. KRATENSTEIN: You can put that 16 document aside and now we'll just do the memos or 17 confirms quickly, Exhibit 71. Make sure this is 18 right. Thanks.</p> <p>19 (Exhibit Numbers 71 and 72 were marked for 20 identification.)</p> <p>21 Q. (By Mr. Kratenstein) Exhibit 71, and here 22 is Exhibit 72. And if you look at Exhibit 71 and 23 72, what are they?</p> <p>24 A. Confirmations.</p> <p>25 Q. Of what?</p>	<p style="text-align: right;">Page 465</p> <p>1 not have been made aware of this letter by Ms. 2 Bongiorno?</p> <p>3 A. No.</p> <p>4 Q. In other words, she would have made you 5 aware of it; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And do you have any reason to believe that 8 Ms. Bongiorno did not receive this letter?</p> <p>9 A. No.</p> <p>10 Q. Do you see the handwriting on the letter?</p> <p>11 A. Yes.</p> <p>12 Q. Is that Ms. Bongiorno's?</p> <p>13 A. Definitely.</p> <p>14 Q. How do you recognize it?</p> <p>15 A. I recognize the handwriting now that I'm 16 looking at it.</p> <p>17 Q. Okay. The letter says -- and I'm sorry. 18 You recognize it from having worked with her; 19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. And Mr. Sage writes after discussions with 22 Paul, we have come up with the following plan with 23 regards to Sage -- the Sage Associates IS-004, Sage 24 Associates II IS-005 and Maurice S. Sage Foundation, 25 Inc. IS-197 accounts. Do you see that?</p>
<p style="text-align: right;">Page 464</p> <p>1 A. Sage Associates, R. J. Reynolds and 2 Broadcom.</p> <p>3 Q. And those are the transactions reflected in 4 Exhibit 69 --</p> <p>5 A. Correct.</p> <p>6 Q. -- being executed by your firm?</p> <p>7 A. Yes.</p> <p>8 (Exhibit Number 73 was marked for 9 identification.)</p> <p>10 Q. (By Mr. Kratenstein) One more to go. 11 Here's Exhibit 73. Are you okay, Mr. Madoff? You 12 need a break?</p> <p>13 A. No. I'm fine.</p> <p>14 Q. Okay. We're almost there. I'm showing you 15 Exhibit 73, Mr. Madoff, which do you see that it's a 16 letter to Bernard L. Madoff Investment Securities, 17 attention, Annette Bongiorno, from Malcolm Sage?</p> <p>18 A. Yes.</p> <p>19 Q. It's on the letterhead of Sage 20 Associates --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- and Sage Associates II and the Maurice 23 S. Sage Foundation?</p> <p>24 A. Yes.</p> <p>25 Q. Do you have any reason to believe you would</p>	<p style="text-align: right;">Page 466</p> <p>1 A. Yes.</p> <p>2 Q. And, again, do you have any understanding 3 of what this plan was?</p> <p>4 A. It's just a tax plan realizing gains when 5 you have a short against the box transaction.</p> <p>6 Q. Do you understand what Ms. Bongiorno's 7 notes mean on this left-hand margin?</p> <p>8 A. By looking at -- by her saying \$3 million 9 gain, it's realizing only part of the transaction.</p> <p>10 Q. What do you mean by that?</p> <p>11 A. In other words, she must have more shares 12 than she wants to sell.</p> <p>13 Q. Okay. And then it says in a box no 14 long-term. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Do you have an understanding --</p> <p>17 A. She doesn't want --</p> <p>18 Q. Let me finish. Do you have an 19 understanding of what that means?</p> <p>20 A. Not to receive -- doesn't -- do not take a 21 long-term gain.</p> <p>22 Q. That would be for a tax reason?</p> <p>23 A. Yes.</p> <p>24 Q. Under Sage Associates there are four 25 transactions being directed. Do you see that?</p>

21 (Pages 463 - 466)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

Page 467	Page 469
1 A. Yes.	1 MR. KRATENSTEIN: Yes.
2 Q. And under Sage Associates II there's one	2 MS. CHAITMAN: Thanks.
3 transaction?	3 (Exhibit Numbers 76, 77, 78 and 79 were
4 A. Yes.	4 marked for identification.)
5 Q. Under Maurice S. Sage Foundation there's	5 Q. (By Mr. Kratenstein) And now let's just do
6 one transaction; correct?	6 the memos and confirms quickly and we're almost
7 A. Yes.	7 done. Here's Exhibit 76, Exhibit 77 --
8 Q. Would these transactions have been	8 MS. FEIN: Thank you.
9 executed?	9 Q. (By Mr. Kratenstein) -- and 78 and 79.
10 A. Yes.	10 Mr. Madoff, have you had an opportunity to look at
11 Q. And that's because your firm would follow	11 what we've marked as Exhibits 70 -- what is it? 76,
12 your client's instructions; correct?	12 77, 78 and 79?
13 A. Correct.	13 A. Yes.
14 (Exhibit Number 74 was marked for	14 Q. And can you tell me what those documents
15 identification.)	15 are?
16 Q. (By Mr. Kratenstein) Let's just again go	16 A. Confirmations.
17 through the quick drill of confirming whether these	17 Q. Do they reflect the instructions with
18 show up on the statements and in the memos and	18 respect to the -- the execution of the instructions
19 confirms, so I'm going to put this letter here. I'm	19 with respect to the Sage Associates account that are
20 going to show you Exhibit 74, which is the	20 contained in the letter that we marked as Exhibit
21 December 31, 2013 Sage Associates statement --	21 Number 73?
22 sorry -- 2003 Sage Associates statement. Do you see	22 A. Yes.
23 that?	23 (Exhibit Numbers 80 and 81 were marked for
24 A. Yes.	24 identification.)
25 Q. And do you see the transfer of the Amgen	25 Q. (By Mr. Kratenstein) Thank you. And there
1 and Symantec as directed --	1 were in that letter instructions for Sage Associates
2 A. Yes.	2 II, so let's just look at those statements quickly.
3 Q. -- in Exhibit 73?	3 This is Exhibit Number 80 and Exhibit 81.
4 A. Yes.	4 And just to refresh your recollection, with
5 (Exhibit Number 75 was marked for	5 respect to Sage Associates II in the letter
6 identification.)	6 Exhibit 73, there's an instruction with respect to
7 Q. (By Mr. Kratenstein) And I'm going to show	7 Symantec for Sage Associates II. And I'm going to
8 you Exhibit 75. And in Exhibit 75, do you see that	8 ask if you see on Exhibits 80 and 81 the execution
9 that is a December 31, 2003 Sage Associates	9 of that instruction?
10 statement?	10 A. Yes.
11 A. Yes.	11 Q. And Exhibit -- just so the record is clear,
12 Q. And do you see there the transactions that	12 Exhibit 80 is a Sage Associates II statement from
13 had been directed by Mr. Sage with respect to	13 December 31, 2003. That's for the sub three
14 National Semiconductor, RJR, Amgen and Symantec?	14 account. And the next exhibit, 81, is a Sage
15 A. Yes.	15 Associates II statement, also December 31, 2003, for
16 MS. FEIN: We didn't receive that.	16 the seven subaccount of Sage Associates II; correct?
17 MR. KRATENSTEIN: Oh, you didn't get that	17 A. Yes.
18 one? I'll just make sure I have the right one.	18 (Exhibit Number 82 was marked for
19 Yes.	19 identification.)
20 MS. FEIN: Thank you. Yes.	20 Q. (By Mr. Kratenstein) Thank you. Finally,
21 MS. CHAITMAN: That's Exhibit 74?	21 the confirm. This is Exhibit 82. Is that a -- what
22 MS. FEIN: This is Exhibit 75; right?	22 is Exhibit 82?
23 MR. KRATENSTEIN: It's Exhibit 75.	23 A. It's a memo.
24 MS. CHAITMAN: I'll ask do you have	24 Q. It's a memo? Does it --
25 another one?	25 A. Showing movement of monies.

22 (Pages 467 - 470)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

Page 471	Page 473
1 Q. Does the second page show the Symantec 2 move? 3 A. Yes. 4 Q. Thank you. And, finally, at the end of the 5 letter, Exhibit 73, you'll see that there's a 6 request to withdraw the sum of \$16,000. Do you see 7 that? 8 A. Yes. 9 (Exhibit Number 83 was marked for 10 identification.) 11 Q. (By Mr. Kratenstein) I'm just showing you 12 Exhibit Number 83. Do you recognize Exhibit 83? 13 A. Yes. 14 Q. What is it? 15 A. A check, memo for a check. 16 Q. For how much? 17 A. Sixteen thousand dollars. 18 Q. To the Maurice S. Sage Foundation? 19 A. Yes. 20 Q. That shows the execution of the instruction 21 at the end of Exhibit 73, the letter? 22 A. Correct. 23 (Exhibit Number 84 was marked for 24 identification.) 25 Q. Thank you. We'll put that aside. I'm	1 A. Yes. 2 Q. And do you understand that to be referring 3 to the Sage family accounts we've been talking 4 about? 5 A. Yes. 6 Q. And do you have an understanding of what 7 the notes on the first page if you look at them 8 mean? 9 A. I can't even read it. 10 Q. Okay. Well, do you see the second sentence 11 says -- tell me if you disagree with this -- could 12 have gone SAB in eBay but cust did not want it? 13 A. Correct. 14 MS. FEIN: Objection to form. 15 Q. (By Mr. Kratenstein) Correct? 16 A. Could have brought short against the box on 17 eBay, but customer did not want it. 18 Q. Do you understand that a member of the Sage 19 family was instructing your firm not to go short 20 against the box on eBay? 21 A. Yes. 22 Q. Would your firm have followed that 23 instruction? 24 A. Yes. 25 (Exhibit Number 85 was marked for
Page 472	Page 474
1 showing you Exhibit 84. Do you recognize 2 Exhibit 84, Mr. Madoff? 3 A. Yes. 4 Q. What is it? 5 A. It's a note from Annette. 6 Q. And you recognize her handwriting? 7 A. Yes. 8 Q. Would this document have been prepared -- 9 well, strike that. Are you familiar with year-end 10 note documents prepared by Ms. Bongiorno? 11 A. Yes. 12 Q. How are you familiar with them? 13 A. I've seen it before. 14 Q. She prepared them in the ordinary course of 15 her business? 16 A. Yes. 17 Q. And it was a regular part of her 18 responsibilities to create notes like this? 19 A. Yes. 20 Q. And these documents would have been kept, a 21 document like this one would have been kept under 22 your firm's custody or control? 23 A. Yes. 24 Q. Do you see that there are notes here for 25 the Sage group?	1 identification.) 2 Q. (By Mr. Kratenstein) You can put that 3 document aside. Exhibit 85. Mr. Madoff, do you see 4 that this is a letter from Malcolm Sage to you? 5 A. Yes. 6 Q. Any reason to believe that you did not 7 receive this letter? 8 A. No. 9 Q. He writes Dear Bernie, it was nice to see 10 you at Ruth -- it was nice to see you and Ruth at 11 Paul's party. Do you see that? 12 A. Yes. 13 Q. And I'll skip some of the rest and I'll go 14 to the second paragraph. In the second sentence he 15 says, quote, when we spoke last year we decided that 16 it would be best to transition away from the managed 17 portfolio accounts. 18 And then he goes on to say a sentence later 19 or two sentences later since then our main holding, 20 eBay, has dropped significantly. As that holding is 21 a long-term one, I was hoping that you had shorted 22 it against the box a while back. If you have a 23 chance, can you confirm that? Do you see that? 24 A. Yes. 25 Q. And do you have any recollection as to

23 (Pages 471 - 474)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

Page 475	Page 477
<p>1 whether you had, in fact, shorted against the box as 2 Mr. Sage had hoped? 3 A. When was this letter written? I don't 4 know. 5 (Exhibit Number 86 was marked for 6 identification.) 7 Q. (By Mr. Kratenstein) Well, let me see if I 8 can refresh your recollection. He didn't date his 9 letters for whatever reason, so we have to match 10 them up against statements and/or confirms and 11 memos. So I'm going to show you Exhibit 86. And do 12 you see that this is a Sage Associates account 13 statement for April 30, 2006?</p> <p>14 A. Yes.</p> <p>15 Q. And do you see that there are various short 16 against the box positions for eBay?</p> <p>17 A. I see sales transactions on eBay, right.</p> <p>18 (Exhibit Number 87 was marked for 19 identification.)</p> <p>20 Q. (By Mr. Kratenstein) Sorry. Sales 21 transactions, correct. And then if we look at 22 Exhibit 48 -- I'm sorry -- Exhibit 87. I apologize. 23 These are memos from this time period. If you look, 24 April 2006, memos and/or confirms. If you'll just 25 take a look at those and tell me what you see in</p>	<p>1 A. Yes. 2 Q. Do you have any reason to believe that you 3 did not receive this letter? 4 A. No. 5 Q. Do you see that Mr. Sage is writing to you, 6 Mr. Madoff, about sale of certain Sage Associates' 7 positions? 8 A. Yes. 9 Q. And he says Martin and I recently met with 10 Paul. Let me stop there. Do you understand Martin 11 to be Malcolm's brother, Martin Sage? 12 A. Yes. 13 Q. Martin and I recently met with Paul in 14 regard to selling our positions in the Sage 15 Associates accounts and to transfer the proceeds 16 into index option accounts. Do you see that? 17 A. Right, yes. 18 Q. And do you have an understanding of what he 19 meant by index option accounts? 20 A. That's a split strike transaction. 21 Q. So prior to this date in Sage Associates it 22 was directed trading and he's now talking about 23 moving to split strike? 24 MS. FEIN: Objection. 25 THE WITNESS: Right.</p>
<p>1 Exhibit 87? What are those? 2 A. I'm looking now. These are all 3 confirmations. 4 Q. And do you see that they say short against 5 the box? 6 A. Yes. 7 Q. So those would have been short against the 8 box transactions? 9 A. Correct. 10 Q. Presumably as requested in the letter that 11 we marked as Exhibit 85? 12 A. Yes. 13 (Exhibit Number 88 was marked for 14 identification.)</p> <p>15 Q. (By Mr. Kratenstein) Thank you. Last 16 letter, last one. This is Exhibit 88. Mr. Madoff, 17 do you see that Exhibit 88 is a letter from Malcolm 18 Sage to you? 19 A. Yes. 20 Q. And it's got handwriting on it? 21 A. Yes. 22 Q. Whose handwriting? 23 A. Annette's. 24 Q. And, again, you recognize that from your 25 time working with her?</p>	<p>1 Q. (By Mr. Kratenstein) Your answer was? 2 A. Correct. 3 Q. Thank you. And if you look on the second 4 page, you can see at the bottom that Ms. Bongiorno's 5 notes have dates in them, one being 8-23-06. Do you 6 see that at the bottom? 7 A. Yes. 8 Q. So do you believe that these notes were 9 created on or around August 23rd, 2006? 10 A. Yes. 11 Q. And Mr. Sage talks about -- he says, quote, 12 he referring presumably to Paul; correct? 13 A. Right. 14 Q. Had some ideas from a tax standpoint and 15 suggested that he with us meet with you at your 16 availability to finalize the transfer and the timing 17 thereof. Do you see that? 18 A. Yes. 19 Q. Do you recall whether you, in fact, met? 20 A. No. 21 Q. You may have, you just don't recall? 22 A. Correct. 23 Q. Then Mr. Sage writes the only concern he 24 had of any immediacy was that we not buy back into 25 the eBay short position because that would trigger a</p>

24 (Pages 475 - 478)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

<p style="text-align: right;">Page 479</p> <p>1 short-term recognition as opposed to, quote, 2 delivering, unquote, the stock. Do you see that? 3 A. Yes. 4 Q. Do you have an understanding of what Mr. 5 Sage was talking about there? 6 A. Yes. He wanted us to deliver the 7 securities as opposed to -- I'm not sure whether he 8 was talking about delivering the securities from one 9 account to the other account, you know, to trigger a 10 particular gain or whether he was talking about 11 delivering the securities out, period, out of the 12 firm. 13 Q. Okay. But he is telling you that he 14 doesn't want you to buy back into the eBay short; 15 correct? 16 A. Right. 17 Q. And that's an instruction from him? 18 A. Yes. 19 Q. You would have followed that instruction? 20 A. Yes. 21 MS. FEIN: Objection. 22 Q. (By Mr. Kratenstein) Would you have 23 followed that instruction? 24 A. Yes. 25 Q. In the notes at the bottom Ms. Bongiorno --</p>	<p style="text-align: right;">Page 481</p> <p>1 you see that? 2 A. Yes. 3 Q. So she writes first I called Malcolm Sage 4 end of June to say the accounts were as close to 5 even and should we do the transfers, exclamation 6 point. Do you see that? 7 A. Yes. 8 Q. He said he would talk to Paul, call back. 9 Do you see that? 10 A. Yes. 11 Q. So is it fair to say that Ms. Bongiorno was 12 seeking instruction from Mr. Sage? 13 A. Yes. 14 Q. Next note, called again end of July. He 15 said he didn't get a chance to get to talk to Paul 16 and he will call me back. Do you see that? 17 A. Yes. 18 Q. And, again, do you understand Ms. Bongiorno 19 to be seeking instructions from Mr. Sage? 20 A. Yes. 21 Q. Last note, called again 8-23-06. He said 22 the or he, it's hard to tell, promises to call me 23 back by Tuesday, August 29, 8-29, exclamation point. 24 Do you see that? 25 A. Yes.</p>
<p style="text-align: right;">Page 480</p> <p>1 well, first, notes at the top Ms. Bongiorno writes 2 ask Bernie about this. Do you see that? 3 A. Yes. 4 Q. Do you recall being asked about this? 5 A. Do I recall? No. I can't -- 6 Q. Right. 7 A. I can't say that I do. 8 Q. Right. It's too long ago? 9 A. Yes. 10 Q. Okay. You may have been asked about it, 11 but you just can't remember? 12 A. That's correct. 13 Q. At the bottom she writes don't do anything. 14 We cannot -- the next word may be trim or tran. Do 15 you have any idea? 16 A. Must be transfer. 17 Q. Transfer everything and leave open short 18 eBay. Do you see that? 19 A. Yes. 20 Q. Do you have an understanding of what she's 21 saying there? 22 A. She's telling us to leave the positions as 23 they appear, as they are. 24 Q. Okay. And then on the next page she writes 25 about several calls she had with Malcolm Sage. Do</p>	<p style="text-align: right;">Page 482</p> <p>1 Q. And, again, fair to say that Ms. Bongiorno 2 was looking for direction from Mr. Sage? 3 A. Correct. 4 Q. Okay. We have talked about the Sage 5 Associates account and the fact that it was not a 6 split strike account; correct? 7 A. Correct. 8 Q. And we can pull out the year-end account 9 statements if you like, but we've marked a couple of 10 them. We marked the December 31, '02 and we marked 11 other year-end statements for Sage Associates during 12 the course of this deposition, but at the end of the 13 year in a split strike account what would -- what 14 types of securities would be in the account? 15 A. Typically, a basket of S&P 100 securities 16 and index options hedging that account. 17 Q. But at the end of the year didn't you go to 18 treasures and cash in most accounts? 19 A. At the end of the year? 20 Q. Yes. 21 A. What period are you talking about? 22 Q. Well, was there ever a period when in split 23 strike accounts you would at the end of the year at 24 least on the statements show that you had liquidated 25 the portfolio of securities in that account and</p>

25 (Pages 479 - 482)

Veritext Legal Solutions

www.veritext.com

212-267-6868

516-608-2400

CONFIDENTIAL

Page 483	Page 485
<p>1 moved it into treasuries and cash?</p> <p>2 A. What period are you talking about because</p> <p>3 we weren't -- I didn't actually do the split strike</p> <p>4 trade --</p> <p>5 Q. Correct.</p> <p>6 A. -- at a certain period of time post-1992.</p> <p>7 Q. I'm talking about post-1992.</p> <p>8 A. Well, then we wouldn't have gone into the</p> <p>9 -- we never would have done the transaction.</p> <p>10 Q. Right.</p> <p>11 A. So the monies could have been in</p> <p>12 treasuries, you know, but it wouldn't be fair to say</p> <p>13 that we were actually executing the split strike</p> <p>14 trade post-1992.</p> <p>15 Q. Right. But on a customer statement</p> <p>16 post-1992 at the end of the year what would you</p> <p>17 show?</p> <p>18 A. It would appear. It would appear in</p> <p>19 treasuries.</p> <p>20 Q. And in the Sage Associates year-end</p> <p>21 statements would you show treasuries or would you</p> <p>22 show actual positions?</p> <p>23 MS. FEIN: Objection.</p> <p>24 THE WITNESS: If it was in a split strike</p> <p>25 strategy, we would not show the positions typically.</p>	<p>1 about.</p> <p>2 Q. Post-1992?</p> <p>3 A. Yes.</p> <p>4 Q. Of 10 to 20 percent; correct?</p> <p>5 A. No.</p> <p>6 Q. What was the general --</p> <p>7 A. Talking about an annualized return?</p> <p>8 Q. Annualized?</p> <p>9 A. Yes.</p> <p>10 Q. So 10 to 20 percent annually?</p> <p>11 A. Correct.</p> <p>12 Q. For an account like the Sage Associates</p> <p>13 account which was not split strike and which was</p> <p>14 showing actual securities, what kind of returns</p> <p>15 would that type of account show?</p> <p>16 A. I have no idea. It depends.</p> <p>17 Q. It would depend on the type of securities</p> <p>18 in the account; right?</p> <p>19 A. That's right.</p> <p>20 Q. It wouldn't be a steady return?</p> <p>21 A. No. Could be, but depends upon there were</p> <p>22 never really steady returns. That's been mentioned</p> <p>23 before. There was some -- there was some -- you</p> <p>24 know, depends upon the strategy and depends upon the</p> <p>25 period of time. It could have been -- if you're</p>
Page 484	Page 486
<p>1 We would just show treasuries, which is a position.</p> <p>2 Q. (By Mr. Kratenstein) Right. And if it was</p> <p>3 not in split strike, what would you show? The</p> <p>4 actual securities that were there?</p> <p>5 A. Yes.</p> <p>6 Q. And so, for example -- let me pull out the</p> <p>7 document. Hang on.</p> <p>8 MS. CHAITMAN: Is that Exhibit 80?</p> <p>9 Q. (By Mr. Kratenstein) Here's Exhibit 63,</p> <p>10 which we've already marked. So here's Exhibit 63.</p> <p>11 See, it's a Sage Associates account statement for</p> <p>12 12-31-02?</p> <p>13 A. Correct.</p> <p>14 Q. And this is for the sub three account?</p> <p>15 A. Yes.</p> <p>16 Q. And you're showing actual securities in the</p> <p>17 account at the end of the year, not treasuries and</p> <p>18 cash?</p> <p>19 A. Correct.</p> <p>20 Q. And that shows it's not split strike;</p> <p>21 right?</p> <p>22 A. Correct.</p> <p>23 Q. Your split strike accounts, they would</p> <p>24 generate on paper steady returns; correct?</p> <p>25 A. Depends upon what period you're talking</p>	<p>1 talking about at the end of the month or the end of</p> <p>2 the quarter, the returns could be all over the</p> <p>3 place.</p> <p>4 Q. So in Sage Associates in 2002, for</p> <p>5 example --</p> <p>6 A. Yes.</p> <p>7 Q. -- if Malcolm Sage was directing you to buy</p> <p>8 and sell securities in Sage Associates; correct?</p> <p>9 A. Yes.</p> <p>10 Q. And you were holding those securities;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. The Sage Associates accounts certainly in</p> <p>14 2002 and any other year in which that type of</p> <p>15 trading was being done would reflect the return of</p> <p>16 the transactions that were executed in the account;</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. And that may not be a steady return? It</p> <p>20 would follow the market for those securities;</p> <p>21 correct?</p> <p>22 MS. FEIN: Objection.</p> <p>23 THE WITNESS: Correct.</p> <p>24 Q. (By Mr. Kratenstein) Correct?</p> <p>25 A. Yes.</p>

26 (Pages 483 - 486)

CONFIDENTIAL

<p style="text-align: right;">Page 487</p> <p>1 MR. KRATENSTEIN: Thank you very much, Mr. 2 Madoff. I have no further questions at this time. 3 Why don't we take a break? 4 MR. GOLDMAN: Your food from the wherever 5 they make it is here. 6 THE VIDEOGRAPHER: Going off the record. 7 The time is 11:09. 8 (A recess was taken and Exhibit 53A was 9 marked for identification.) 10 THE VIDEOGRAPHER: Back on the record. 11 The time is 11:58. 12 Q. (By Mr. Kratenstein) Mr. Madoff, it was 13 pointed out during your examination that we had an 14 error in one of our exhibits, so I just want to 15 correct the error. 16 I put in front of you, back in front of you 17 Exhibit 47, which was the -- a letter from Malcolm 18 Sage to Bernard L. Madoff Investment Securities. 19 And it says Dear Bernie -- we marked it as 20 Exhibit 47. One of the transactions in that letter 21 under 1(c) involved movement of International Paper 22 moving the short position from the Sage Associates 23 seven account to the three account. Do you see 24 that? 25 A. Yes.</p>	<p style="text-align: right;">Page 489</p> <p>1 that you're not planning to do an examination today. 2 We are waiting until the direct examination of Mr. 3 Madoff is finished to start our cross-examination. 4 That's what was contemplated by the order that was 5 entered by this Court September 11th, 2017 regarding 6 Mr. Madoff's second day deposition. 7 To the extent for whatever reason that we 8 don't have time to finish our cross-examination 9 tomorrow, we will object to the use of the testimony 10 and move to strike the direct testimony. Thanks. 11 MR. KRATENSTEIN: Before you go off, I 12 want to make sure I understand that. If you don't 13 have time to finish your cross tomorrow, you reserve 14 the right to strike everything we did today? 15 MS. FEIN: What I should say is to the 16 extent we're not permitted equal time to finish 17 tomorrow, so if for some reason Mr. Madoff is 18 unavailable tomorrow or there's some reason where we 19 don't have sufficient time in one day; not that we 20 would need -- be seeking future days after that, but 21 as long as we are provided what the order 22 contemplated, which is one day of direct testimony 23 and we shouldn't need more than that and that's what 24 we've agreed to, then that's all that we would need. 25 MR. KRATENSTEIN: Okay. Well, I think I</p>
<p style="text-align: right;">Page 488</p> <p>1 Q. And I had showed you as Exhibit 53 memos 2 and/or confirms relating to that and it was pointed 3 out that we had some mispagination. So I'm showing 4 you Exhibit 53A, which bears production numbers Sage 5 0004290 to 91. Do you see that? 6 A. Uh-huh. 7 Q. And can you tell me what that is? 8 A. It's a credit memo. 9 Q. And that shows the transfer of the 10 international paper short position from the seven 11 account to the three account -- 12 A. Right. 13 Q. -- as reflected -- 14 A. Right. 15 Q. -- as instructed rather in Exhibit 47? 16 A. Correct. 17 Q. And you would have these memos instead of 18 confirms because it's an internal transfer? 19 A. That's correct. 20 Q. If you were doing a -- you'd have a confirm 21 when you were actually buying or selling? 22 A. Right. 23 MR. KRATENSTEIN: Thank you very much. 24 That concludes my direct examination. Thank you. 25 MS. FEIN: I understand from you, Helen,</p>	<p style="text-align: right;">Page 490</p> <p>1 understand your position, but we reserve all 2 rights -- 3 MS. FEIN: Certainly. 4 MR. KRATENSTEIN: -- and cross these 5 bridges if and when we get to them. 6 MS. FEIN: Certainly. Thank you. 7 MR. KRATENSTEIN: Thanks. 8 THE VIDEOGRAPHER: We're off the record in 9 the November 8th, 2017 deposition of Bernard L. 10 Madoff, Volume III. The number of discs used was 11 one. The time is 12:02. 12 (Reading and signing of the deposition by 13 the witness was reserved and the deposition was 14 adjourned at 12:02 p.m.) 15 * * * * * 16 17 18 19 20 21 22 23 24 25</p>

27 (Pages 487 - 490)

CONFIDENTIAL

1 C E R T I F I C A T E 2 NORTH CAROLINA: 3 GUILFORD COUNTY: 4 I hereby certify that the foregoing 5 deposition was reported, as stated in the caption, 6 and the questions and answers thereto were reduced 7 to the written page under my direction; that the 8 foregoing pages 386 through 493 represent a true and 9 correct transcript of the evidence given. I further 10 certify that I am not in any way financially 11 interested in the result of said case. 12 I have no written contract to provide 13 reporting services with any party to the case, any 14 counsel in the case, or any reporter or reporting 15 agency from whom a referral might have been made to 16 cover this deposition. I will charge my usual and 17 customary rates to all parties in the case. 18 This, the 21st day of November, 2017. 19 20 21 <i>K. Denise Neal</i> 22 K. Denise Neal, RPR Registered Professional Reporter 23 Notary Public No. 200517500101 24 25	Page 491	Page 493
1 E R R A T A S H E E T 2 3 Pursuant to Rule 30(7)(e) of the Federal Rules 4 of Civil Procedure, any changes in form or substance 5 which you desire to make to your deposition 6 testimony shall be entered upon the deposition with 7 a statement of the reasons given for making them. 8 9 To assist you in making any such corrections, 10 please use the form below. If supplemental or 11 additional pages are necessary, please furnish same 12 and attach them to this errata sheet. 13 * * * * * 14 I, the undersigned, BERNARD L. MADOFF, do hereby 15 certify that I have read the foregoing deposition 16 and that to the best of my knowledge said deposition 17 is true and accurate (with the exception of the 18 following corrections listed below). 19 20 21 22 23 24 25	Page 492	

28 (Pages 491 - 493)